

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

\* \* \* \* \* C.A. NO. 12-517M  
\*  
LORI FRANCHINA \*  
\*  
VS. \* APRIL 14, 2016  
\* 9:30 A.M.  
\*  
CITY OF PROVIDENCE \*  
\*  
\* \* \* \* \* PROVIDENCE, RI

BEFORE THE HONORABLE JOHN J. McCONNELL, JR.,  
DISTRICT JUDGE

(Jury Trial - Volume VI)

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1 14 APRIL 2016 -- 9:30 A.M.

2 THE COURT: Good morning, everyone. How are you  
3 all? It's a little bit warmer in here, don't you  
4 think? If you start coming in with gloves on, then  
5 we're really in trouble.

6 Can you all assure me that you didn't do any  
7 independent research, didn't talk to anyone, discuss  
8 this case with anyone, didn't mention anything on  
9 social media about your jury service and didn't see any  
10 news reports about the trial? Great. Thanks,  
11 everyone.

12 Mr. McHugh.

13 MR. McHUGH: Thank you, your Honor. George  
14 Farrell, please.

15 THE COURT: Right up here, Chief. And if you'd  
16 just remain standing when you get to the witness stand,  
17 Ms. McGuire will swear you in.

18 **GEORGE FARRELL, DEFENSE WITNESS, SWORN**

19 THE CLERK: Would you please state your name and  
20 spell your last name for the record.

21 THE WITNESS: George S. Farrell, F-A-R-R-E-L-L.

22 THE COURT: Good morning.

23 THE WITNESS: Good morning.

24 THE COURT: Chief, just make yourself  
25 comfortable, pull the chair in. Someone I think has

1 told you exactly what to do. Speak right into the  
2 microphone when you speak.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thanks. Mr. McHugh.

5 MR. McHUGH: Thank you, your Honor.

6 **DIRECT EXAMINATION**

7 **BY MR. McHUGH:**

8 Q. Good morning, Chief.

9 A. Good morning.

10 Q. Chief, you're retired from the Providence Fire  
11 Department; right?

12 A. Yes, sir.

13 Q. How many years did you serve on the Providence  
14 Fire Department?

15 A. Approximately 30 years total.

16 Q. And did you go to the Providence Fire Training  
17 Academy?

18 A. Yes, sir.

19 Q. When was that?

20 A. 1980.

21 Q. Which academy was that?

22 A. The 38th, I believe.

23 Q. And what was your first assignment out of the  
24 academy?

25 A. My first assignment was, after we began rotating

1 around for a little while, I went to Ladder Company 6  
2 at Atwells Avenue.

3 Q. And what were your duties and responsibilities on  
4 Ladder Company 6 at Atwells Avenue?

5 A. I was a firefighter, everything from washing the  
6 truck and apparatus, cleaning the station; and then as  
7 a ladder company firefighter, performing all the duties  
8 and responsibilities that would be required at a scene  
9 of an emergency.

10 Q. And what was your next assignment?

11 A. From there I bid to Ladder Company 2 at Messer  
12 Street and similar duties and responsibilities at that  
13 station.

14 Q. How long were you at Messer Street for?

15 A. I was there from probably 1990 through 1992.

16 Q. And eventually you left Messer Street?

17 A. Yes, sir. I was promoted to lieutenant.

18 Q. Was that lieutenant of an engine company?

19 A. Initially I rotated around to a number of  
20 different companies until I got an assignment at Engine  
21 Company 11, which at the time was stationed at the  
22 Broad Street Fire Station.

23 Q. Okay. And how were your duties different as a  
24 lieutenant than they had been as a line firefighter?

25 A. Well, you had overall care and management

1 responsibilities for your company, the station,  
2 depending upon whether you were a single-house company  
3 or there were multiple companies assigned there, and  
4 certainly overall care and management of the personnel  
5 who worked for you and scene management when you would  
6 go on the scene of a fire or an emergency -- any  
7 emergency situation.

8 Q. How long were you in that position for?

9 A. Well, at Engine 11 and then throughout -- through  
10 Engine 8 was my last company assignment as an engine  
11 company officer through about 2002.

12 Q. Where was Engine Company 8?

13 A. Engine Company 8 was at the Messer Street Fire  
14 Station.

15 Q. So when you were lieutenant -- when you first  
16 became a lieutenant, how many firefighters did you have  
17 under your command?

18 A. When I was at Engine 11, two.

19 Q. What about at Messer Street?

20 A. Three.

21 Q. And how long did you stay at the Messer Street  
22 Station as a lieutenant?

23 A. I was there until, I believe it was, September of  
24 2002, so approximately eight years or so.

25 Q. And what was your next assignment?

1       A.    I was promoted to the deputy fire marshal's  
2       position, which was a command of company or chief  
3       officer's position.

4       Q.    What were your duties and responsibilities as the  
5       deputy fire marshal?

6       A.    In that position I oversaw and assisted the fire  
7       marshal with management of the Fire Prevention Bureau.  
8       We enforced codes and ordinances throughout the City of  
9       Providence as it related to fire code; and we did plan  
10      review, inspections, smoke detector inspections and  
11      anything that related to enforcement of fire prevention  
12      codes and ordinances both on the local level here in  
13      the city as well as the state law, the fire safety code  
14      laws of the State of Rhode Island.

15      Q.    In that position, did you have any firefighters  
16      under your command?

17      A.    In that position we had at that point probably  
18      somewhere around 15 captain, lieutenant, plan  
19      reviewers, investigators all under the command of the  
20      Fire Prevention Bureau.

21      Q.    What was your next assignment, Chief?

22      A.    I was promoted from deputy fire marshal to fire  
23      marshal in the same division.

24      Q.    So you went from deputy fire marshal to fire  
25      marshal?

1       A.    Yes, sir.

2       Q.    So now you oversaw the whole office?

3       A.    I oversaw the whole office, yes, sir.

4       Q.    So how many people were you overseeing when you  
5       were the actual marshal?

6       A.    Probably about the same number of people. There  
7       was a fire marshal, a deputy fire marshal. As fire  
8       marshal, you took on additional responsibilities for  
9       dealing with personnel in the City of Providence, the  
10      command staff, being on the command staff of the chief  
11      more often in meeting with the chief of the department,  
12      became involved with more meetings having to do with  
13      dealing with the City of Providence's other  
14      departments, the Department of Inspection and  
15      Standards, maybe city hall on some committees that we  
16      were trying to implement faster procedures for approval  
17      of building structures, zoning and all of those kind of  
18      things.

19      Q.    How long were you the fire marshal for?

20      A.    I was the fire marshal for I believe three years  
21      or so.

22      Q.    And after you finished your stint as the fire  
23      marshal, where did you go?

24      A.    Well, at the same time I was fire marshal, I also  
25      was asked by the mayor at the time to take over as the



1 acting director of the Department of Inspection and  
2 Standards. So I spent a period of about three or four  
3 months overseeing another department in the city at the  
4 same time.

5 I oversaw the Department of Inspection and  
6 Standards, which was basically overseeing all of the  
7 building code issues having to do with structures and  
8 zoning, plumbing, mechanical, electrical and all of  
9 those things.

10 That assignment at the same time was under -- I  
11 was overseeing that for the mayor at the same time and  
12 remained fire marshal for the city fire department.

13 Q. Now, in the Department of Inspection and  
14 Standards, how many employees did you oversee there?

15 A. Probably about 40.

16 Q. So you were overseeing 40 there and approximately  
17 15 as the fire marshal?

18 A. Yes, sir.

19 Q. So approximately 55?

20 A. About that.

21 Q. And at least 40 of them were civilians?

22 A. In the Department of Inspection and Standards,  
23 they were all civilians.

24 Q. And were they all sworn fire personnel in the fire  
25 marshal's office?

1       A.    There may have been a few -- I think we had two  
2       civilian personnel, which were our administrative  
3       assistants within that division.

4       Q.    All right. So at some point in time you left both  
5       of those positions; correct?

6       A.    Yes, sir.

7       Q.    And where did you go?

8       A.    I was asked by the governor to become the state  
9       fire marshal. So I retired from the fire department in  
10      Providence in 2006, and I became the state fire  
11      marshal.

12      Q.    And in 2006, how many years had you had in the  
13      fire department?

14      A.    About 26 years.

15      Q.    So you went and became the fire marshal for the  
16      entire state?

17      A.    Yes, sir.

18      Q.    And what were your duties and responsibilities as  
19      the fire marshal for the entire state?

20      A.    Fire code enforcement, fire investigation, bomb  
21      squad. We were in charge -- the state bomb squad was  
22      under my command, and I worked throughout the State of  
23      Rhode Island.

24               We actually had authority and jurisdiction over  
25      every fire marshal. Every assistant deputy state fire

1 marshal who was licensed throughout the State of Rhode  
2 Island had to be authorized and licensed through the  
3 state fire marshal.

4 So we did education, training, bomb squad, plan  
5 review. In the state fire marshal's office, we were  
6 responsible for any state licensed facilities so  
7 hospitals, daycares, nurseries. Anything that was  
8 licensed by the state, we had overall jurisdiction for  
9 that.

10 And then we also had jurisdiction over the local  
11 communities should there be any issues that we needed  
12 to deal with from the state level.

13 Q. So you had jurisdiction over all of the 39 cities  
14 and towns?

15 A. Over the 39 cities and towns, the airport, pretty  
16 much everything except federal buildings; but we did a  
17 lot of work even in the federal. They would come to us  
18 to comply with Rhode Island codes.

19 Q. And how many people did you have working under you  
20 when you were the state fire marshal?

21 A. Probably about 25 or 30.

22 Q. Now, you subsequently left there and came back to  
23 the city; correct?

24 A. That's correct.

25 Q. How long did you stay in the position of state

1 fire marshal for?

2 A. Just under a year.

3 Q. And in what capacity did you return to the city?

4 A. I came back to the Providence Fire Department. I  
5 was appointed chief of the department in May of 19 --  
6 I'm sorry, May of 2007.

7 Q. Okay. And what were your duties and  
8 responsibilities as chief of the department in May of  
9 2007?

10 A. I was charged with overall care and management for  
11 every division and all of the personnel here in the  
12 City of Providence. I was in charge of the Fire  
13 Prevention Bureau. Everything came under my command,  
14 including a repair division that repaired our  
15 apparatus, supply rooms, EMS, emergency medical  
16 services, rescue. Everything came under chief of the  
17 department as it related to the fire department and our  
18 responsibilities here in the city.

19 Q. And how many people did you have under your  
20 jurisdiction when you were the chief of the department?

21 A. Probably close to 439, I think was about the  
22 number.

23 Q. And they were all fire department personnel;  
24 correct?

25 A. No, that's not correct. I had probably in the --

1 most of the people who worked in the repair division  
2 where they repaired our apparatus and equipment, those  
3 were mostly civilians. So we probably had about 15  
4 people there.

5 And then there was a number of civilians that  
6 worked as my executive assistant, my administrative  
7 assistant, the secretaries in the office and the  
8 clerical personnel who worked within -- mostly in the  
9 Fire Prevention Bureau.

10 Q. So you had -- when you were the chief of the  
11 department, you had civilians under you as well as  
12 sworn personnel?

13 A. Yes, sir.

14 Q. Did you ever do any stint at the, after you were  
15 sworn in as a firefighter, at the Providence  
16 firefighter training academy?

17 A. Yes.

18 Q. What did you do there, Chief?

19 A. I was a training officer I believe in 1994 for  
20 that academy, 2001, and in some periods in time in  
21 2002.

22 Q. When you say a training officer, what does that  
23 mean?

24 A. I was a lieutenant at the time, and we would be  
25 involved with all of the training, educating the new

1 firefighters, new recruits in, you know, all of the  
2 facets, hydraulics, fire science and all of the things  
3 that were necessary to become a firefighter in the City  
4 of Providence. So we basically ran the day-to-day  
5 operations of a number of people in the Division of  
6 Training.

7 Q. Did you ever work on any of those for lack of a  
8 better word I call them special trucks, Special Hazards  
9 or any of those units?

10 A. Yes. As a firefighter, I would be detailed in,  
11 maybe have a call-back in Special Hazards or detailed  
12 into rescue. On Special Hazards, when I made the  
13 lieutenant's list, I was assigned to Special Hazards  
14 for a while as the acting lieutenant on a specific  
15 group.

16 Q. Did you ever work on the rescue?

17 A. Yes, sir.

18 Q. How long did you work on the rescue for?

19 A. Not very long. I served in -- when I was on the  
20 department early on, as we were becoming more oriented  
21 into the rescue and emergency services, when I came on  
22 we only had three rescues. So there wasn't as many  
23 assignments.

24 And we would be assigned there -- when I first  
25 came on, they would assign you for maybe for one cycle,

1 two days and two nights, and then maybe you would get  
2 assigned for six months to get some experience in  
3 there; but the vast majority of my career was in the  
4 fire suppression end of the fire service.

5 Q. And when you were on the rescue, were you a  
6 lieutenant or a tech?

7 A. No, sir, I was a firefighter, just basic --  
8 EMT-Basic.

9 Q. Because every Providence firefighter is trained in  
10 EMT-Basic; correct?

11 A. Generally, yes, they are, sir.

12 Q. It is a condition of employment; right?

13 A. It is a condition of employment.

14 Q. Are you married or single, Chief?

15 A. I am married.

16 Q. Any children?

17 A. Two girls.

18 Q. How old are they?

19 A. Thirty and twenty-five.

20 Q. How about your educational background?

21 A. I have a degree in fire science, associate's  
22 degree in fire science from the Community College of  
23 Rhode Island; and I have a bachelor's degree from Roger  
24 Williams University in public administration.

25 Q. Now, you're retired from the fire department, but

1       you're still somewhat involved in the department;  
2       correct?

3       A.    Yes, sir.

4       Q.    What is your role in the fire department now?

5       A.    I was asked to come back by this administration as  
6       a consultant for the commissioner of public safety. So  
7       I'm in not every day, but I go in; and if there are  
8       issues that the -- the commissioner, who was the  
9       colonel of the State Police, so there are issues that  
10      come up that he may be unfamiliar with with the fire  
11      service and fire department, and he will talk to me  
12      about some of those issues and managing the fire  
13      department from the experience that I've had previously  
14      in there as chief in my experience and generally  
15      statewide with the fire service.

16      Q.    In addition to consulting for the Providence Fire  
17      Department, do you do any other consulting now?

18      A.    I have a small business. I do a little bit of  
19      consulting on my own.

20      Q.    What kind of consulting do you do, Chief?

21      A.    Fire code consulting mostly.

22      Q.    From time to time when you were the chief, would  
23      you issue memoranda?

24      A.    Yes, sir.

25      Q.    Would you issue general orders?



1       A.    Yes, sir.

2       Q.    Directives?

3       A.    Yes, sir.

4           MR. McHUGH: Your Honor, if I could have this  
5 marked for identification. If I could have this marked  
6 as Defendant's Q for identification, please.

7           THE COURT: Sure.

8           MR. MARTIN: There's no objection to this.

9           THE COURT: No objection to it being admitted?

10          MR. MARTIN: Correct.

11          THE COURT: Great. Exhibit Q will be admitted  
12 as a full exhibit without objection.

13          (Defendant's Exhibit Q admitted in full.)

14          THE COURT: You can show it to the witness once  
15 he identifies it and to the jury, Mr. McHugh, whenever  
16 you want.

17          MR. McHUGH: May I approach?

18          THE COURT: Sure.

19       Q.    Can you just read that whole document, please,  
20 Chief.

21       A.    All of it?

22       Q.    Yes, please.

23       A.    This is --

24       Q.    Well, to yourself.

25       A.    Okay. Okay.

1 Q. Can you identify that for the jury, please, Chief.

2 A. This is a Providence Fire Department Memorandum  
3 Number 102, Series 2007. That's just generally the  
4 year that it comes out. And this is dated 26 October  
5 '07, and the subject was training topics, November  
6 training topics.

7 Q. Did you issue that?

8 A. I believe I did.

9 MR. McHUGH: Your Honor, could I publish this to  
10 the jury on the ELM0, please.

11 THE COURT: Yes, you can.

12 Q. All right. Let me ask you some questions on this,  
13 Chief. Can you see it also on your screen?

14 A. Yes, sir.

15 Q. All right. It's called Memorandum Number 102.  
16 What was a memorandum in the fire department when you  
17 were the chief?

18 A. Generally memorandums are issued to remind people  
19 to do certain things or to direct members of the  
20 department to do certain things. In this case it was a  
21 directive to the members of the department,  
22 particularly out to the company officers, to -- and to  
23 the chief officers as well to make sure that they  
24 reviewed specific items that we wanted them to review  
25 or specific issues for this particular month.

1 Q. And I notice it's numbered Number 102. Does that  
2 mean Number 102 in 2007 or Number 102 over time?

3 A. 102 in 2007.

4 Q. Okay. And the date, October 26th, 2007, is that  
5 when you issued this?

6 A. Yes, sir.

7 Q. And so it was November training topics. Now,  
8 these are topics that the department was to be trained  
9 in during the month of November?

10 A. Right. Well, everybody in the department had been  
11 trained in all of these topics prior to this memo being  
12 issued, but we would continue our training even after  
13 you had come out of the Division of Training or studied  
14 for a fire academy.

15 And some of the reasons for these memorandums  
16 and specific topics could have been for NFPA 1500 in  
17 this case, which was a health and safety standard, a  
18 nationwide standard but also part of the Rhode Island  
19 state statutes under the fire code.

20 Insurance Services Offices, they insure fire  
21 departments, and they rate your fire department based  
22 on training. And some of those things, we wanted to  
23 make sure topics were discussed. So we would be -- all  
24 fire departments in cities and towns are rated, and the  
25 Insurance Services Offices do that. So we would try to

1       comply with them to keep our rating, which at the time  
2       was Class 2 and we were trying to move to a Class 1,  
3       and then other rules and regulations within the  
4       department that we wanted our membership to become or  
5       our people to become familiar with again and to review  
6       just to make sure that we were reviewing topics that we  
7       felt were important.

8       Q.    So at the bottom it says, "Attached are November's  
9       required training topics." And if you look at the  
10      second page, you have three topics there that are  
11      required for November 2007; correct?

12     A.    Yes, sir.

13     Q.    Ventilation, what does that refer to?

14     A.    That would refer to how we would ventilate a  
15      specific facility or occupancy if there was a fire or  
16      an emergency.

17                You know, it could be roof operations, opening  
18      the roof up when there's a fire. You'll see the ladder  
19      companies will go to the roof and open the fire, and  
20      that would be part of ventilation. Opening windows  
21      specific sides of the building and ventilating that  
22      building to remove toxic gases and smoke, and that  
23      would be part of the ventilation.

24                And also to control fire spread, the way we do  
25      ventilation or perform ventilation helps us to control

1 in some cases prevention of fire from moving from one  
2 location in a building or one floor of a building to  
3 another and also to prevent what you would call  
4 backdrafts or smoke explosions or flashovers within a  
5 building because those gases contained, you know,  
6 certain hazardous materials that could also ignite.

7 Q. Number 2 is structure fires. What's that topic,  
8 Chief?

9 A. They would discuss, again, the different type of  
10 structures that we would be dealing with, the different  
11 type of construction that we would be dealing with.  
12 And they would range from just a, you know, a house all  
13 the way up to maybe an industrial building or a complex  
14 in addition to, you know, whether it was built with  
15 wood, whether it was built with steel, whether it was  
16 built with concrete.

17 And how we would fight those type of structure  
18 fires would be dependent on, in a lot of cases, the  
19 construction as well as the contents of the building.

20 Q. And Number 3 is sexual harassment policy; correct?

21 A. Yes, sir.

22 Q. Now, if you look at page 3, you've got these  
23 subtopics; and under sexual harassment policy, Number  
24 3, "All officers are to review the City of Providence  
25 sexual harassment policy with their members." And can

1       you tell us what the difference there is between  
2       officers and members?

3       A.     Well, the officers would be any officer of the  
4       department. It could be a chief officer as well as  
5       each of the commanding officers of a company. It could  
6       be a captain or a lieutenant. It could be -- as well  
7       as the Fire Prevention Bureau.

8             It was generally everybody in the department was  
9       required based on this to review those specific items  
10      that we noted, and in this case Number 3 would be to  
11      review the sexual harassment policy of the City of  
12      Providence as well as our rules and regulations, which  
13      also contained the Providence Fire Department policies  
14      on sexual harassment.

15      Q.     All right. And then you said, "The City of  
16      Providence sexual harassment policy is incorporated  
17      into the Providence Fire Department Rules and  
18      Regulations in Chapter 16." Correct?

19      A.     Yes, sir.

20             MR. McHUGH: Can I show the witness and publish  
21      to the jury, your Honor, Exhibit Number 36, please.

22             THE COURT: Sure.

23      Q.     Take a look at this, Chief. If you need to read  
24      the whole thing, let me know, and I'll flip the page.

25      A.     I'm generally familiar with it. I haven't looked

1 at it in a while, but I'm familiar with it.

2 Q. It says General Order Number 1. What's a general  
3 order, Chief?

4 A. That's a specific order that comes from the  
5 department. It carries more weight than a memorandum  
6 or an announcement, and it's very specific that you are  
7 required to comply with what is contained within that  
8 general order.

9 Q. And that is -- that order came out in 1998;  
10 correct?

11 A. Yes, sir.

12 Q. And you were on the department then?

13 A. Yes, sir.

14 Q. What were you doing on the department in 1998,  
15 Chief?

16 A. I was lieutenant I believe at that time in  
17 Engine 8, but I was a lieutenant at that time.

18 Q. Now, in your exhibit, we just talked about  
19 Topic 3, Number 1, you ordered them to -- the officers  
20 to review the city's sexual harassment policy and also  
21 the sexual harassment policy that was incorporated into  
22 the rules and regulations which you just identified in  
23 the general order; correct?

24 A. Yes, sir.

25 MR. McHUGH: May I show the witness and have

1 published to the jury Exhibit 1 full, please, your  
2 Honor.

3 THE COURT: Sure.

4 Q. I'm going to put up Exhibit 1, Chief, and ask if  
5 you are aware of this sexual harassment policy.

6 A. In a general sense I would say I was. The only  
7 thing that would cause me any pause is I really didn't  
8 work long under Mayor Angel Tavares, but it was  
9 generally the same policy that we had in place. It was  
10 just issued, I believe, with this title because he was  
11 mayor at the time.

12 Q. Why did you order the officers to review the  
13 sexual harassment policy with the members?

14 A. Well, we ordered our members to look at numerous  
15 documents, as you saw. Each month we would choose  
16 training topics for them to review. Annually -- we  
17 would try annually to review some policies that were  
18 not just fire department policies but also city  
19 policies, in that case the sexual harassment policy,  
20 and it was -- generally the sexual harassment policy  
21 and the rules and regulations were issued when you came  
22 to the fire department.

23 One of the first things we do with a new recruit  
24 is issue them the rules and regulations, and in this  
25 case they would contain the sexual harassment policy.



1 And that would be continual. The rules and regulations  
2 remained in force and effect throughout your entire  
3 career; but you would also study those as part of your  
4 promotional study material, and we would review those  
5 when we went into the training academy for officers,  
6 when the officers would go through their training as  
7 well.

8 So we would continue to review all of our  
9 policies, and at specific points in time we may define  
10 something that we wanted you to review specifically for  
11 a month or at a particular time.

12 Q. So even anyone who had come on the Providence Fire  
13 Department prior to this, when you issued this order in  
14 2007, that policy would have been reviewed with them by  
15 officers?

16 A. Yes, sir.

17 Q. So I take it you didn't want these policies just  
18 sitting in a locker somewhere?

19 A. No. You know, the issue was -- I mean, over a  
20 period of time, we issued a lot of orders. We would  
21 issue standard operating procedures. We would issue  
22 memorandums.

23 And there may be specific times of the year that  
24 we would reissue or identify a certain policy that we  
25 wanted you to review, whether it would be rules,

1 operating procedures or training bulletins.

2 You know, for instance, in the wintertime we  
3 would want you to review winter operations, ice drills,  
4 ice rescue drills and things like that. So we picked  
5 certain topics that we thought we wanted you to review  
6 at certain times, and it could also be based on we  
7 would have a, you know, major fire like we did a couple  
8 weeks ago, wind-driven and lot of issues and cyanide.  
9 There was some cyanide poisoning.

10 And the department would reissue specific  
11 policies after something like that to remind, you know,  
12 our members that they were there and to review them to  
13 make sure that it's best that they would comply.

14 Q. Other than the specific training you ordered in  
15 2007, are you aware of anyone else doing sexual  
16 harassment training in the fire department?

17 A. Yes, sir.

18 Q. Who else did sexual harassment training in the  
19 fire department?

20 A. Well, I think initially it was Gwen Andrade.

21 Q. Who is she?

22 A. She was a human resource officer or the EEO  
23 officer. I don't recall exactly what her title was in  
24 probably the 1990s. And then at the time period I was  
25 chief, it was Olayinka, and she was the EEO officer for

1 the City of Providence, and she would also do trainings  
2 for us at the academy with some of our -- some of our  
3 promotional academies as well.

4 Q. When you say promotional academies, is that the  
5 same as a point school?

6 A. No, that's different than a point school.

7 Q. What's a point school, Chief?

8 A. We would annually, and actually it was part of the  
9 collective bargaining agreement, we would annually have  
10 a point school.

11 So you would attend a specific training that we  
12 wanted you to review. In some cases it would be, I  
13 believe, the sexual harassment policy or discrimination  
14 policies maybe. We would do other trainings having to  
15 do with, you know, issues that we felt were important  
16 that you reviewed. And you would be given an  
17 additional point, quarter point or whatever towards  
18 your promotion.

19 So if you went to those academies, we would give  
20 you a point. When you went to become promoted, we  
21 would add those point schools -- those points from the  
22 point schools to your seniority points and other things  
23 that you were given on the department to give you a  
24 total score for your promotion.

25 Q. And both the point school and the promotional

1 classes, they would include incumbent firefighters;  
2 correct?

3 A. They would generally be everybody on the fire  
4 department because you didn't want to lose the  
5 opportunity to get, you know, a quarter of a point or a  
6 half a point or a point and a half. There were schools  
7 that were a point and a half for hydraulics when I  
8 first came on, but you didn't -- generally no one  
9 missed the opportunity to get to a point school because  
10 it was helpful when you were getting promoted to have  
11 those points available to you.

12 Q. So there was sexual harassment training done in  
13 the training academy for the recruits?

14 A. Yes, sir.

15 Q. And then when you were chief in 2007, you ordered  
16 a review of the sexual harassment policy; right?

17 A. Yes, sir.

18 Q. And that one had been issued in 1998?

19 A. Yes, sir.

20 Q. And before you were the chief, I think you said  
21 Gwen Andrade did training of the incumbent  
22 firefighters?

23 A. Yes, sir.

24 Q. Also during your tenure as chief, Oredugba  
25 Olayinka did training in sexual harassment with

1       incumbent firefighters?

2       A.    Yes, sir.

3       Q.    I want to ask you some questions, Chief, about  
4       Lori Franchina. You know who Lori Franchina is;  
5       correct?

6       A.    Yes, I do.

7       Q.    Sometime in August or September of 2009, did you  
8       receive information that she was making complaints of  
9       harassment?

10      A.    I received information that she was complaining  
11      about harassment or an incident that took place. I  
12      think the first time I was informed was about an  
13      incident that took place at the union hall.

14      Q.    Okay. Well, let's back up to September of --  
15      August or September of 2009. Do you remember  
16      discussing any issues with Lori Franchina in August or  
17      September of 2009 with Olayinka Oredugba?

18      A.    Yes.

19      Q.    And did she contact you, Olayinka, or who  
20      contacted you?

21      A.    I believe that she may have contacted me.

22      Q.    Okay. And did you actually meet with her?

23      A.    I believe I did.

24      Q.    And can you tell us what the topic of that meeting  
25      was.

1       A.    I believe -- it's been a while, but I believe that  
2       Lieutenant Franchina may have gone to Olayinka and  
3       lodged a complaint. She was having difficulties on the  
4       fire department with harassment, and I think Olayinka  
5       contacted me.

6       Q.    All right. And did you take any action when  
7       Olayinka told you about this?

8       A.    I'm sure I did. Any issues that came up,  
9       particularly with the EEO officer, I would meet with my  
10      command staff and discuss those issues with them to  
11      make sure that they were, as well as the rest of the  
12      membership was, complying with any issues and  
13      directives or, if there was any issues on the  
14      department, that we took corrective actions as we  
15      deemed appropriate at that time.

16      Q.    So after your meeting with Olayinka, what steps  
17      did you take?

18      A.    My steps would have been to meet with my command  
19      staff, which I did on just about every Tuesday.

20      Q.    Who comprised your command staff?

21      A.    The assistant chief of the department for  
22      administration at that time was Chief Warren, the  
23      assistant chief of the department for operations at  
24      that time was Chief Dillon, my investigative officer  
25      who was Chief Morgan, my EMS chief who was Chief

1 Crawford. I would meet with my fire marshal, who was  
2 Fire Marshal Anthony DiGiulio; and I believe our  
3 communications chief would come in, who at that time  
4 was Chief Taylor, and also the director of the Division  
5 of Training, Chief Gallant.

6 Q. So that comprised your command staff?

7 A. Yes, sir.

8 Q. And you said you met with them every week?

9 A. Generally every Tuesday.

10 Q. And what did you tell them -- what did you tell  
11 your command staff after you learned of these  
12 complaints?

13 A. I would have directed my command staff to look  
14 into those complaints to make sure that they directed  
15 through their subordinates, which would be everybody  
16 under the command staff level, deputy assistant chiefs,  
17 chief officers and those chief officers to the members  
18 of the department in whatever division that they were  
19 assigned to, that they were required to comply with  
20 rules and regulations, they were required to comply  
21 with any of the policies and procedures that were of  
22 concern at that time.

23 Q. And when you say you told your command staff, now  
24 are they directed to tell those below them?

25 A. Yes, sir.

1 Q. And who would constitute in the chain of command  
2 those below the command staff?

3 A. It would be anybody below -- that worked in the  
4 shifts. Generally the command staff were the people  
5 who worked in the front office upstairs with me in the  
6 chief's office or with the directors of the training  
7 academy, the fire marshal or the communications  
8 division.

9 So they would go back out to the company  
10 officers. In this case, it would probably be Chief  
11 Dillon as the chief of operations that was his part --  
12 under his responsibilities was to go out and to direct  
13 the members in the engines, ladders and rescues and  
14 other divisions to comply with whatever directives or  
15 discussions we had that we wanted them to be -- you  
16 know, to review. So he would, and then they would go  
17 from the chiefs down to the lieutenants and captains.

18 Q. So you were the top person in the fire department?

19 A. Yes, sir.

20 Q. So when you give a directive like this, it was  
21 supposed to go to the officers in the stations  
22 themselves?

23 A. It would generally follow the chain of command and  
24 should be from me right through the chain of command to  
25 whoever the junior person is on the fire department.



1 Q. Okay. And what about the line firefighters in the  
2 stations, would they get word of this, too?

3 A. Oh, yes.

4 Q. And this directive that you gave after the meeting  
5 with Olayinka, was that written or verbal?

6 A. It was probably verbal.

7 Q. Okay. And you gave verbal orders all the time in  
8 the fire department?

9 A. I did.

10 Q. Did you give written orders also?

11 A. I did.

12 Q. Did you give general orders?

13 A. Yes, sir.

14 Q. And you gave memorandum like we just saw; correct?

15 A. Yes, sir.

16 Q. And when you gave an order, whether it was verbal,  
17 written or otherwise, would you expect that your order  
18 would be followed?

19 A. Yes, sir.

20 Q. And why was that?

21 A. That's how a department in the fire department,  
22 the fire service, that's how we operate is that orders  
23 come and orders are received, and the directives or  
24 orders given are expected to be followed to the best of  
25 the knowledge and ability of the person that we're

1 giving that order to.

2 It wasn't always, "I'm ordering you." It would  
3 be if I directed Chief Dillon or Chief Warren or Morgan  
4 or any lieutenant or captain as chief or as a  
5 lieutenant to the people under my command, if I said, I  
6 want you to polish the brass, I didn't necessarily say,  
7 "This is an order," but it was generally taken that way  
8 that you were being directed, and that's how we  
9 followed orders.

10 Q. Well, if you're the chief of the department and  
11 you tell someone I want you to polish the brass, they  
12 take that as an order?

13 A. I think that they would.

14 Q. You're not giving them -- really giving them a  
15 choice; right?

16 A. No. I think if there was an order that -- if  
17 there was something that I asked someone to do, if I  
18 said can you do this for me, if it wasn't complied with  
19 and it was something that I felt was of importance, I  
20 may ask them the next time did you mistake that for a  
21 request because it generally wasn't.

22 But we didn't go around saying, I'm ordering you  
23 to do this. We would say, I want you to do this. I  
24 want you to go out and talk to the chiefs about this,  
25 and it would get done.

1 Q. And did you have confidence in the officers below  
2 you?

3 A. Yes, sir.

4 Q. Now, you mentioned something about an incident at  
5 the Firefighters' Hall; correct?

6 A. Yes, sir.

7 Q. And you know that Chief Dillon sent out an e-mail  
8 regarding that incident?

9 A. Yes, sir.

10 MR. McHUGH: Let me show that to you, Chief. I  
11 think this is -- is this 6? I shouldn't be asking you.  
12 I should know myself.

13 MR. MARTIN: I think that's right, Kevin.

14 THE COURT: It's 6.

15 MR. McHUGH: Oh, I was right. Thank you.

16 THE CLERK: It's the e-mail.

17 Q. Could you just read this to yourself, Chief,  
18 please.

19 A. Okay.

20 Q. You've seen this before; correct?

21 A. Yes, I have.

22 Q. Now, when this was issued January 5th, 2010, what  
23 was your position then?

24 A. Chief of the department.

25 Q. And what was Chief Dillon's position?

1       A.     Assistant chief of the department for operations.

2       Q.     Would he have been number two in the department,  
3     then?

4       A.     He was pretty much equal with Chief Warren, who  
5     was the assistant chief for administration, but yes.

6       Q.     So those would be the two right below you?

7       A.     Yeah. We would only really designate them  
8     differently by the assignment that they had on the  
9     radio. I was Car 1. They were Car 2 and 3. They had  
10    their responsibilities, but their rank and pay grade  
11    was equal.

12    Q.     And do you remember that you discussed this e-mail  
13    at all with Chief Dillon?

14    A.     Yes, sir.

15    Q.     And what was the purpose of this?

16    A.     This order wouldn't have come out without some  
17    discussion with me first. I'm sure we discussed this  
18    at a command staff meeting. And Chief Dillon was  
19    directed by me to issue an order after that, the  
20    incident at the union hall, to do our best to keep  
21    Firefighter McGarty out of stations and in proximity  
22    other than emergency responses from Lieutenant  
23    Franchina.

24    Q.     So you considered this an order?

25    A.     I did.

1 Q. And you actually ordered Chief Dillon to put it  
2 out?

3 A. Yes, sir.

4 Q. Now, in your 31 years on the Providence Fire  
5 Department, have you ever seen an order like this  
6 before?

7 A. Not to my knowledge, no.

8 Q. This is an order separating two firefighters;  
9 right?

10 A. This was -- if you look, it went from Chief Dillon  
11 to each of the two battalions as well as the deputy  
12 assistant chief in Division 1, all of the assistant  
13 chiefs, the Emergency Medical Division chief, as well  
14 as the department investigative officer.

15 So it went from the chief, and then it was sent  
16 out to them, and they were directed to discuss this --  
17 the chiefs generally control the staffing and manpower,  
18 so they would discuss trying to make sure that  
19 Firefighter McGarty was not assigned to the same  
20 station as Lieutenant Franchina.

21 Q. Now, I understand that some time -- I don't think  
22 it was too long after that that you had gone out sick.

23 A. I went out -- I was transitioning out probably in  
24 November of 2010, but by December of 2010 I was no  
25 longer -- I was still chief until -- officially until

1 June of 2011, but I was out sick for a while.

2 Q. Okay. Now, Chief, there's been some testimony in  
3 this -- you've spent a lot of years on the fire  
4 department. I'm sure you've gone to a lot of fires.  
5 Correct?

6 A. Yes, sir.

7 Q. So there has been some testimony in this case  
8 about who's in charge at the scene of a fire. So I  
9 want to ask you a couple of questions about that.

10 MR. MARTIN: Objection. I don't recall any  
11 fires coming into this case at all.

12 THE COURT: Let's see where he's going.  
13 Overruled for now.

14 Q. When a -- well, let me rephrase that. Who is in  
15 charge of a scene when there's a rescue and an engine  
16 company, okay, whether it be a fire or -- well, don't  
17 rescues get sent to working fires as a matter of  
18 course?

19 A. Yes, sir.

20 Q. So when you have a scene where you have a rescue  
21 on scene and you have an engine company on scene, what  
22 is the rescue lieutenant in charge of?

23 A. The rescue officer or the person in charge or the  
24 acting officer would be in charge of patient care and  
25 overseeing the patient care and management.

1 Q. And who was in charge of the overall scene?

2 A. The -- if it was a rescue and an engine, the first  
3 responding officer, the first officer on the scene  
4 would be the, quote, "incident commander." And the  
5 fire company officer, let's say it was a fire company  
6 or an engine company with a rescue company, overall  
7 scene management and control of the scene would be the  
8 fire company officer.

9 Q. So it's the officer on the company who is in  
10 charge of the scene and not the rescue lieutenant?

11 A. Scene management would be the officer in charge of  
12 the scene.

13 Q. Right. Is that written down anywhere, Chief?

14 A. Yes, it is.

15 MR. McHUGH: Your Honor, may I have this marked  
16 as Defendant's T for identification, please.

17 MR. MARTIN: No objection to this entering  
18 evidence.

19 THE COURT: No objection, Mr. Martin?

20 MR. MARTIN: No objection.

21 THE COURT: Great. Exhibit T will be admitted  
22 as a full exhibit without objection.

23 (Defendant's Exhibit T admitted in full.)

24 MR. McHUGH: May I approach the witness, your  
25 Honor?

1 THE COURT: Sure.

2 Q. Chief, I want you to read this whole document, and  
3 then we're going to put it up on the ELMO and ask you  
4 some questions about it, please.

5 A. Okay.

6 MR. McHUGH: Can I publish this to the jury,  
7 your Honor?

8 THE COURT: Sure. Pull it down a little bit.  
9 There you go. Thanks.

10 Q. Now, Chief, we've had this morning a general order  
11 you testified to, correct, the sexual harassment  
12 policy?

13 A. Yes, sir.

14 Q. We had the memorandum for training you testified  
15 to; correct?

16 A. Yes, sir.

17 Q. We had the e-mail from Chief Dillon; correct?

18 A. Yes, sir.

19 Q. And now we have a document entitled Standing  
20 Operating Procedure. Could you tell the jury what a  
21 standing operating procedure is, please.

22 A. We would from time to time, in this case we were  
23 up to 21, but there were numerous more than these,  
24 these would be the procedures that we would generally  
25 want our engines, ladders and all of our personnel to



1 operate under under specific issues that we were  
2 talking about in that general order. I think in some  
3 there were ventilation, structural fires,  
4 accountability and all of those things.

5 In this case it was for the emergency medical  
6 first responders, which were generally the engine and  
7 ladder companies that were responding to a medical  
8 emergency.

9 Q. And then the rescue would follow in?

10 A. Yes.

11 Q. Now, what does it mean SOP Number 21?

12 A. That was -- we numbered the standard operating  
13 procedures so we could go back and refer to them. So  
14 we issued it by number.

15 Q. Were they issued by number by year or just  
16 chronologically from day one?

17 A. Probably from just day one. So, you know,  
18 depending on when we issued the policy, it would follow  
19 in chronological order.

20 Q. So this one was effective October 30th, 2002?

21 A. Yes, sir.

22 Q. And this one involves the responding company to a  
23 medical emergency as well as the rescue?

24 A. It was to provide uniform guidelines for also  
25 dispatching, response of the fire companies to

1 life-threatening emergencies to medical incidences.

2 Q. All right. Let me ask you a few questions here.  
3 Down below where it says A, First Responder, "Company  
4 shall be the closest available fire company," what does  
5 that mean?

6 A. Well, depending -- we had, you know, 14 engine  
7 companies and eight ladder companies as well as Special  
8 Hazards trucks. So we had 23 engines and ladders in  
9 addition to, depending on the timeframe, three, four,  
10 five, six and now seven rescue companies.

11 So if there was a life-threatening emergency,  
12 our rescues are on the go all the time, so they may not  
13 be in the proximity of where the medical emergency or  
14 the call was coming from.

15 So we would send the closest engine company  
16 generally, but sometimes a ladder company, to that  
17 scene first. It could just be that the rescue company  
18 was unavailable. It could also be that a rescue  
19 company was coming on mutual aid from another community  
20 to Providence.

21 But we would send -- and depending on the  
22 medical emergency as well. So for life-threatening, we  
23 delineated a number here that you will see, A through  
24 J; but if we had a mutual aid company coming from out  
25 of town, we would also send a first responder company,

1 engine or ladder, to that rescue because they would  
2 arrive on scene in most cases before the rescue.

3 Q. Can you tell the jury what you meant when you just  
4 said mutual aid company from out of town.

5 A. If we didn't have a rescue available in  
6 Providence, we would call other communities surrounding  
7 the city and ask if they had a rescue available, and  
8 that rescue company -- it could be like this morning,  
9 we had engines and ladders into the city because we had  
10 a multiple-alarm fire.

11 But in this case, if we needed a rescue, the  
12 rescue would come in, and we would always send one of  
13 our companies that was closest to that emergency to get  
14 there and get on scene and begin providing whatever  
15 medical care and treatment that patient may need.

16 Q. All right. Look under Procedures For First  
17 Responder Companies. So the first thing is, upon  
18 arrival at the scene, conduct a primary survey of the  
19 patient; correct?

20 A. Yes, sir.

21 Q. And then Number 2 is establish a chief complaint  
22 and a clinical impression and patient history; right?

23 A. Yes, sir.

24 Q. Number 3, provide prehospital care as necessary,  
25 if necessary. Does that mean if a person is going to

1 be transported to the hospital?

2 A. Well, you know, sometimes -- we didn't always get  
3 runs where there were medical issues. We got runs from  
4 -- sometimes it was, you know, someone was having  
5 difficulty, and it wasn't always a medical emergency.

6 But if it was necessary to provide medical care  
7 and treatment and if it was going to be required for  
8 the first responding company, the engine or ladder and  
9 the additional personnel, they would begin providing  
10 whatever medical care and treatment based on the  
11 protocols and based on also their level of skill and  
12 training and qualifications.

13 Q. Now, Number 4 says, "Pertinent victim status  
14 information shall be relayed via radio by the fire  
15 company officer to the incoming rescue unit."

16 So it seems, then, if the engine company's on  
17 scene first, they're supposed to radio the rescue if  
18 they're not there yet and give them the information  
19 that's listed there?

20 A. If the engine company arrived on the scene first,  
21 the engine or ladder, they would try and obtain as much  
22 medical information as they could from the patient or  
23 from the other people on scene; and they would  
24 generally transmit that information to our  
25 communications division who would then transmit it or

1       they would listen to it on the radio or transmit it  
2       over to the incoming rescue unit if that was possible.

3               Sometimes the rescue would arrive, you know,  
4       just within a couple of minutes, and it didn't always  
5       get transmitted prior to the rescue company arrival.

6       Q.    Okay. And then Number 5 says, "Upon arrival of  
7       the rescue unit, the rescue officer will be in charge  
8       of the medical condition of the patient."

9               So once the rescue officer, that would be a  
10      lieutenant or a captain; right?

11     A.    Most of the time. Sometimes it was an acting  
12     officer.

13     Q.    Okay. Or acting?

14     A.    Right.

15     Q.    So when that person gets on scene with the rescue,  
16     they are in charge of the medical condition of the  
17     patient, not the engine company; correct?

18     A.    Right. You would transfer the care of that  
19     patient to the incoming rescue and rescue officers, but  
20     you would continue to work with the rescue company.  
21     Generally you would work with them, if necessary, and  
22     remain on scene and even sometimes transport or be  
23     released by the rescue officer.

24              But the rescue officer would then begin taking  
25     control of the emergency medical and the protocols that

1       were going to be used.

2       **Q.**   And then it says, "The incident commander," and in  
3       parentheses, "(first arriving officer or other officer  
4       who has assumed command)." Will you explain to the  
5       jury what an incident commander is.

6       **A.**   An incident where it was just a rescue, a fire  
7       apparatus and a rescue, it would be the first arriving  
8       officer. It would be the lieutenant or captain on that  
9       engine company. They would assume command in just a  
10      small incident like that.

11           When you got to multiple incidences, you would  
12      actually hear -- the incident commander in many cases  
13      would assume command, and they would name the command  
14      that they had. It may be a street location, like  
15      today, Angell Street.

16           So they would arrive on scene and say, you know,  
17      Battalion 3 is on scene assuming Angell Street command.  
18      In those instances, depending on the size, complexity,  
19      the number of companies, it would be more clearly  
20      defined and delineated what was being set up and how  
21      that was being done and who was in command.

22           And then all of the communications in most  
23      instances would go through that commanding officer in  
24      that incident command. So if I was on the scene as an  
25      engine company officer, I would say, "Engine 8 to

1 command," and the command officer would transmit back  
2 to me, "Go ahead, Engine 8," and you'd give your  
3 report.

4 On smaller instances, for first responder and  
5 EMS, it was generally only a rescue and engine; but it  
6 was always understood that someone had to assume  
7 command. The EMS assumed command for the patient, and  
8 the incident commander always remained per this general  
9 order or should have remained the company officer.

10 Q. All right. And it says, the rest of that  
11 sentence, "Shall remain in command of all other matters  
12 concerning the incident, including scene safety";  
13 right?

14 A. Including scene safety, yes, sir.

15 Q. Incident mitigation, what does that mean, sir?

16 A. Well, if you had a car accident and there was fuel  
17 leaking from that vehicle or there was a fire, you  
18 would -- they would continue to try and mitigate those  
19 circumstances and control the flow of the fuel, control  
20 the fire, if you were trying to extricate someone from  
21 a car or even in a house fire where you may be on the  
22 scene and the company officer was trying to mitigate  
23 the circumstances, put out the fire and remove someone  
24 who was in danger.

25 So incident mitigation and then, again,

1       extrication, I just kind of explained with a car  
2       accident getting someone out of either a car,  
3       extricating them from a building collapse or any of  
4       those things.

5       Q.     Okay. And then the engine company is supposed to  
6       remain on the scene to assist, if necessary, the  
7       rescue; correct?

8       A.     If it was necessary, the rescue, engine or  
9       sometimes even a chief officer was called depending on  
10      the severity of the incident to an EMS emergency. I  
11      think if we dispatched a few -- a couple of rescues,  
12      I'm not sure of the number because I'm not working, I'm  
13      not as familiar as I was, but if it was multiple rescue  
14      companies and multiple fire companies, we would send a  
15      chief officer as well.

16      Q.     And sometimes it's not necessary; right?

17      A.     Sometimes it's not necessary.

18      Q.     Now, Chief, I want to ask you some questions about  
19      Andre Ferro. You know who Andre Ferro is; correct?

20      A.     Yes, sir.

21      Q.     And you know that Andre Ferro was fired by the  
22      city's trial board?

23      A.     Yes, sir.

24      Q.     Were you the chief when Andre Ferro was fired?

25      A.     I believe I was the chief when he was terminated.



1 Q. Were you the chief while the trial board was  
2 actually going on?

3 A. I don't believe I was.

4 Q. So by the time you had been chief -- at the time  
5 you were the chief, Ferro's fired; right?

6 A. Yes, sir.

7 Q. And then he filed a grievance under the union  
8 contract?

9 A. Yes, sir.

10 Q. And there was an arbitration scheduled; correct?

11 A. Right. We denied the grievance, and the union  
12 scheduled an arbitration.

13 Q. Can you explain to the jury how that grievance  
14 procedure worked.

15 A. Well, he was -- Firefighter Ferro was terminated  
16 by the trial board. Local 799 would file a grievance,  
17 in his case filed a grievance on his behalf indicating  
18 that we had violated his rights under the collective  
19 bargaining agreement and in this case believing he  
20 shouldn't be terminated.

21 And we denied that grievance, and then the  
22 process would go that they would file for arbitration,  
23 which they did in this case, and an arbitration hearing  
24 would be scheduled to review that termination and the  
25 circumstances around that termination.

1 Q. And could you tell the jury what the trial board  
2 is -- consists of that terminated him.

3 A. The trial board consists of the municipal court  
4 judge, the head of the municipal court. It would  
5 consist of the commissioner or the acting commissioner,  
6 whoever's in place. At that time I believe the acting  
7 commissioner was Mayor Cicilline, and he would --  
8 generally he would assign a person to sit on his behalf  
9 on that board as well as the human resource officer for  
10 the City of Providence, who I believe is Sybil  
11 Bailey -- was and is Sybil Bailey.

12 Q. Was it the chief judge of the municipal court or  
13 the probate judge?

14 A. Off the top of my -- I'm not sure. It's Judge  
15 Martinelli.

16 Q. The probate judge?

17 A. The probate judge. Okay.

18 Q. But at the time the arbitration was scheduled, you  
19 were the chief; correct?

20 A. Yes, sir.

21 Q. And did you attend the arbitration hearing?

22 A. I did.

23 Q. Who else attended on behalf of the city?

24 A. Chief Warren was there.

25 Q. Chief Warren was who at the time?

1       A.    He was my assistant chief for administration as  
2       well as we had our attorney, Attorney Jeff Kasle.

3       Q.    Anyone else there with you?

4       A.    Lieutenant Franchina was there with us on our  
5       side, and on the opposite side was the union. I  
6       believe they had Paul Reed, who was preparing and  
7       presenting their arbitration case, as well as  
8       Firefighter Ferro and I believe it was the vice  
9       president of the union. I'm not sure if it was Phil  
10      Fiore or Joe Miller, but it was -- some union  
11      representatives were there. I don't recall everyone.

12      Q.    On the day of the arbitration, there was an  
13      agreement reached?

14      A.    Yes, there was.

15      Q.    That was reduced to writing by the arbitrator?

16      A.    Yes, it was.

17           MR. McHUGH: Your Honor, could I have this  
18      marked for identification as Defendant's R.

19           MR. MARTIN: No objection to the admission of  
20      this document.

21           THE COURT: Exhibit R will be admitted as a full  
22      exhibit without objection.

23           (Defendant's Exhibit R admitted in full.)

24           MR. McHUGH: May I approach the witness, your  
25      Honor?

1 THE COURT: Sure.

2 Q. Chief, I'm going to show you what's been marked as  
3 the city's Exhibit R, and could you read that document  
4 before I publish it to the jury, please.

5 A. Okay.

6 MR. McHUGH: Can I publish this to the jury,  
7 your Honor?

8 THE COURT: You may.

9 Q. So at the top, Chief, this is the name of the  
10 arbitration; right? It's the union versus the city,  
11 essentially?

12 A. Yes, sir.

13 Q. And this is entitled an award of arbitrator.  
14 What's an award of arbitrator?

15 A. This in this case this -- generally in all cases  
16 we would usually go through the procedure; and at the  
17 end, if it still remained unresolved, the arbitrator  
18 would issue his or her decision based on the facts that  
19 were presented.

20 In this case, we came to a settlement prior to  
21 the conclusion of the case being presented, and it was  
22 agreed to by the parties, and then I believe at the  
23 time it was signed by Chief Warren who was there as  
24 well as Andre Ferro.

25 And then we stipulated -- basically in this case

1 it was called a stipulated award. We stipulated to the  
2 facts, the resolution, and then the arbitrator issued  
3 it as a decision of that arbitrator.

4 Q. So you essentially had the agreement between the  
5 parties memorialized in writing by the arbitrator in  
6 this document?

7 A. It was reduced into writing, this decision. It  
8 was actually signed by Chief Warren and signed by Andre  
9 Ferro.

10 Q. Let's take a look at this for a minute. Number 1,  
11 the grievant was Andre Ferro; right?

12 A. Yes, sir.

13 Q. And the date of the arbitration was October 21st,  
14 2008, right, at the bottom?

15 A. I can't see the bottom.

16 Q. I'm sorry.

17 A. It was the date that he -- the arbitrator signed  
18 the decision, October 21st. I don't recall if that was  
19 the actual date or the date that he signed the  
20 decision.

21 Q. And so the agreement provided that Ferro would be  
22 reinstated effective November 2nd, 2008?

23 A. Yes, sir.

24 Q. And it says to D Group, Engine 4. What's that  
25 consist of?

1       A.    At that time we had a four-platoon system, A, B,  
2       C, D Group; and Engine 4 would be the company on D  
3       Group that Firefighter Ferro would be assigned to.

4       Q.    And then it says subject to an assignment --  
5       subject to an assignment to the Division of Training  
6       for two weeks. So he was sent to the Division of  
7       Training for two weeks?

8       A.    Yes, sir.

9       Q.    And what was that for?

10      A.    Well, because we had -- he had been off the job  
11      after being terminated for probably close to a year and  
12      a half. So we always -- when someone was out of the  
13      fire station off an engine or rescue or ladder company,  
14      even if it was sometimes for an injury, we would try to  
15      reassign them to the Division of Training to review any  
16      policies, procedures, general orders or anything that  
17      had come out and give them some retraining because  
18      there may have been new training that had taken place,  
19      new equipment that had taken place.

20                So we would send them there for a couple of  
21      weeks to get retraining in anything that the division  
22      trainer felt it was necessary that they get brought  
23      back up to speed or to skill on.

24      Q.    And then Number 3 says, "The grievant shall be  
25      subject to a last-chance agreement." What's a

1 last-chance agreement?

2 A. Basically if Firefighter Ferro had any infractions  
3 within the department, minor or major, we could  
4 terminate him without a hearing.

5 Q. Well, this one specifically stated that any  
6 violation of the department's equal employment -- equal  
7 opportunity regulations or the anti-discrimination  
8 provision in the collective bargaining agreement shall  
9 result in termination; correct?

10 A. Yes, sir.

11 Q. And the last-chance agreement was going to last  
12 for a period of 18 months beginning November 2nd, 2008?

13 A. Yes, sir.

14 Q. And then Number 4, you said, "The grievant shall  
15 attend on personal time at personal expense a mutually  
16 acceptable sexual harassment training within six months  
17 of his reinstatement." And why did you require that,  
18 Chief?

19 A. Because we wanted to make sure not only in  
20 addition to going to the rules -- to the Division of  
21 Training to get retraining, which would include making  
22 sure that we reviewed all of those items I discussed  
23 previously, that he had specific training as related to  
24 sexual harassment issues beyond what we did in the fire  
25 department.

1 Q. So that was in addition to?

2 A. Yes, sir.

3 Q. Number 5, you required that Ferro provide a letter  
4 of apology to Lieutenant Franchina delivered to the  
5 chief prior to Ferro's reinstatement. Why did you do  
6 that?

7 A. We wanted to make sure that there was something  
8 there that he apologized to the lieutenant for his  
9 actions for which -- well, he was getting his job back  
10 here but for the actions that took place that  
11 originally led to the trial board, the charges, the  
12 trial board prior to this hearing.

13 Q. The next, Number 6, references conduct points,  
14 good conduct points. What are they?

15 A. Those are points that, if taken away from you,  
16 would be deducted from your score as it related to a  
17 promotion. We talked about point schools earlier and  
18 seniority points and things like that; but losing two  
19 good conduct points was something that no one really  
20 wanted to happen because when you went for a promotion,  
21 two good conduct points could mean that you were on or  
22 off a promotional list for lieutenant, for a promotion  
23 to lieutenant given the complexity and the -- how  
24 difficult it was to get promoted.

25 If you lose a couple of points, you are probably



1 going to lose your promotion for a long time and maybe  
2 in some cases that I was aware of people never got  
3 promoted.

4 Q. Why do you say a long time?

5 A. Well, because you lost them completely, but they  
6 would certainly affect your ability to get promoted in  
7 the fire department.

8 There were other cases where I disciplined  
9 someone, took their good conduct points away in  
10 addition to a couple of other things, and the person  
11 never was able to get promoted because everybody else  
12 is catching up with seniority points and you lost two  
13 points.

14 In our promotional system, we're separated from  
15 number 1 to number 10 on that list by just maybe a half  
16 a point or a quarter of a point. So losing two points  
17 could make the difference of making the list or not  
18 making the promotional list.

19 Q. I noticed that there's nothing in here about back  
20 pay. Did Ferro receive any back pay?

21 A. Number 2, the grievant shall not receive back pay  
22 or benefits for the period of time when he was  
23 terminated. So it was probably about a year and a half  
24 of salary. It was probably his longevity, holiday pay  
25 and all of those things, details that may have been

1 available to him, opportunities for call-back and  
2 overtime. So it was tens of thousands of dollars.

3 Q. And that was gone forever?

4 A. Gone forever.

5 Q. And Number 7, the last part of it says, "This is a  
6 full and final resolution of all issues relating to  
7 this arbitration and is acceptable to all parties."

8 Was this award of the arbitrator acceptable to Local  
9 799?

10 A. Yes.

11 Q. Was it acceptable to Ferro?

12 A. Yes.

13 Q. Was it acceptable to Chief Warren, did you say you  
14 had with you?

15 A. Yes.

16 Q. Was it acceptable to you?

17 A. Yes.

18 Q. Was it acceptable to Lori Franchina?

19 A. Yes.

20 Q. How do you know it was acceptable to Lori  
21 Franchina?

22 A. She was there, and we discussed this decision with  
23 her throughout. We certainly explained how the  
24 arbitration case could go. The arbitrator had the  
25 ability to make whatever decision from keeping the

1 termination in place to reinstatement without any  
2 restriction.

3 And we denied the grievance and were prepared to  
4 go forward and would have gone forward had we not  
5 reached resolution and agreement; and specifically  
6 that's why Number 7 was included, because everybody who  
7 was there was in agreement.

8 Q. Did you ever tell her, If you don't agree to this,  
9 things are going to be rough for you on the department?

10 A. No.

11 Q. Now, there's also been some testimony, Chief, in  
12 this case about promotions to the rank of lieutenant,  
13 specifically rescue lieutenant. When Lori Franchina --  
14 do you know when Lori Franchina was promoted to rescue  
15 lieutenant?

16 A. I believe it was 2006, 2007, somewhere in that  
17 time period.

18 Q. And she had graduated from the academy in 2002;  
19 right?

20 A. Yes.

21 Q. So was that the normal course of time, period of  
22 time for promotion?

23 A. For a rescue lieutenant? That was probably within  
24 the normal timeframe for a rescue lieutenant. It was  
25 different for rescue lieutenants. They were able to

1 take the promotional exam sooner and generally in a lot  
2 of cases would make lieutenant sooner than you would if  
3 you were in an engine or a ladder -- if you were a fire  
4 suppression engine or ladder company officer. It took  
5 longer in fire and -- fire companies than it did in a  
6 rescue company to get promoted.

7 Q. Why was that, Chief?

8 A. We didn't have as many people available to us.  
9 Not everybody stayed in the rescue division for a long  
10 time. So in the fire -- on the fire end, for fire  
11 suppression lieutenant, you would have to have I  
12 believe it was six years before you could begin taking  
13 the promotion to become a lieutenant.

14 In the rescue division, that had been lowered to  
15 I think it was three years by the collective bargaining  
16 agreement between the union because we were having a  
17 more difficult time getting rescue officers. So we  
18 reduced the number of years before you could begin  
19 taking a promotional exam.

20 Q. And when these promotions to lieutenant or  
21 captain, whatever they may be, are they usually done in  
22 a group of people or just individuals?

23 A. We would have put out an announcement that we were  
24 going to have a promotional exam based on vacancies for  
25 those lieutenants and captains in fire or EMS; and then

1       whatever number of people who are available by number  
2       of years in the department, they would be able to take  
3       that promotional exam.

4               So in this case it was specific -- in our  
5       department, we had rescue exam -- EMS promotions for  
6       lieutenant and captain, we had fire suppression  
7       promotions for lieutenant and captain. Fire Prevention  
8       Bureau was a different promotional system, as was  
9       communications division.

10      **Q.**   And do you know at the time that Lori Franchina  
11      was promoted, was anyone else from her academy promoted  
12      to rescue lieutenant at the same time she was?

13      **A.**   Yes, two other members of her particular academy,  
14      Lieutenant Franchina's particular academy, were  
15      promoted at the same time.

16      **Q.**   So those other two individuals who were promoted,  
17      they were promoted within five years, also?

18      **A.**   They were promoted within the same timeframe.  
19      There were two that graduated with Lieutenant Franchina  
20      from her class in 2002, and they were also on the  
21      promotional list with Lieutenant Franchina.

22               I don't recall exactly when it was, but there  
23      were two other members of her academy who were promoted  
24      at the same time.

25               MR. McHUGH: Thank you very much, Chief.



1       A.    I believe it's in the -- I'm sorry, the rules and  
2       regulations. I believe it's in the rules and  
3       regulations.

4       Q.    I see. So that would be Exhibit 36. Do you  
5       remember the one that was in the rules and regulations?

6       A.    I believe I do.

7       Q.    Would you know it if you saw it? You'd probably  
8       know it if you saw it?

9       A.    Probably, yes, sir.

10      Q.    Is this one, General Order Number 1, Series 1998?

11      A.    I believe so.

12      Q.    Okay. This is the one that says complaints of  
13      sexual harassment and/or retaliation will be accepted  
14      in writing or verbally; correct?

15      A.    Yes, sir. That's what it says.

16      Q.    All right. I also want to discuss with you  
17      Standing Operating Procedure Number 21. I believe this  
18      is entered into evidence as Exhibit Defense T. This  
19      says that they are instructed to review with their  
20      staff the sexual harassment policy incorporated into  
21      the rules and regulations, Chapter 16; correct?

22      A.    Yes, sir.

23      Q.    And that's what we just looked at?

24      A.    I believe so.

25           MR. MARTIN: Thank you, sir.

1           Ma'am clerk, there was another exhibit entered  
2 into evidence. I believe it's Q.

3           THE CLERK: Q is the Memorandum Number 102.

4           MR. MARTIN: Could I see that, please.

5           THE COURT: T was introduced during the direct.  
6 T, like Thomas.

7           MR. MARTIN: Was there another exhibit?

8           THE CLERK: There was R.

9           MR. MARTIN: R. I'm so sorry. Thank you.

10          Was there another exhibit?

11          THE CLERK: No. We had Q, T and R.

12          MR. MARTIN: Q, T and R. And that's --

13          THE CLERK: Q, R.

14          MR. MARTIN: And I just did T?

15          THE CLERK: There's T.

16          MR. MARTIN: This is the one. I'm sorry.

17          THE CLERK: That's all right.

18          Q. Sorry about that, Chief. So you remember this  
19 one, too? This is the emergency medical first  
20 responder?

21          A. Yes, sir.

22          Q. Standing Operating Procedure Number 21?

23          A. Yes, sir.

24          Q. And this is about who is in charge of the scene  
25 and who is required to do what?



1       A.    Yes, sir.

2       Q.    Okay.  And you discussed with Mr. McHugh at length  
3 paragraph number 5; correct?

4       A.    Yes, sir.

5       Q.    I'd like to discuss with you paragraph number 6  
6 because number 6 says that the fire companies shall  
7 remain on the scene to assist the rescue company; is  
8 that correct?

9       A.    Yes, sir.

10      Q.    Until the rescue officer feels that the medical  
11 condition of the patient no longer warrants any  
12 additional assistance; is that correct?

13      A.    Yes, sir.

14      Q.    The rescue officer shall release the fire company  
15 as soon as practical after the rescue unit arrives on  
16 the scene; correct?

17      A.    Yes, sir.

18      Q.    So when it comes to the care of a patient, it is  
19 the rescue officer who is issuing the orders?

20      A.    I believe I testified to that.  Yes, sir.  The  
21 rescue officer is in charge of patient care.

22      Q.    And the fire company shall follow those orders?

23      A.    Generally they will work together to comply with  
24 the directives given by the rescue officer as it  
25 related to patient care.

1 Q. So when you said to Mr. McHugh, and I want to make  
2 sure that I got this right, that the rescue officer is  
3 never in charge of an engine company, that's not  
4 exactly correct?

5 A. Not as it related to the sections that I was  
6 discussing as if the incident commander was the rescue  
7 company officer -- I'm sorry, the engine company or  
8 fire company officer.

9 The rescue officer is in charge for direction as  
10 it related to patient care; but yes, at that point in  
11 time there would be some direction given by the rescue  
12 officer to the other members on the scene.

13 Q. I want to make sure I understand what you said  
14 because it's important. When you were talking about  
15 paragraph 5 that you discussed with Mr. McHugh, it is  
16 true that a rescue officer would never be in charge of  
17 the engine company?

18 A. Unless it related to patient care.

19 Q. And in number 6, when it does relate to patient  
20 care, the rescue officer would be in charge of members  
21 of the engine company?

22 A. Yes, sir.

23 Q. And the failure of that engine company to follow  
24 that officer's orders would be insubordination?

25 A. Yes, sir.

1 Q. Insubordination warranting discipline?

2 A. Depending on the insubordination and the  
3 occurrences that were there.

4 Q. All right. Let's talk about some rules at the  
5 department. Chief, I'm going to show you on the ELM0  
6 some pages from the Providence Fire Department Rules  
7 and Regulations. That's Exhibit Number 5. You can  
8 look at those pages individually on the ELM0 or you  
9 could have the entire exhibit with you on the stand if  
10 you'd prefer. Which would you like?

11 A. I guess we could try on the screen first; and if  
12 I'm having difficulty, I'll just ask for it, if that's  
13 okay.

14 Q. That's perfectly fine. And if at any point I'm  
15 switching the pages too fast, just let me know, and  
16 I'll go slower. Okay?

17 A. Okay. Thank you.

18 Q. Sure. First referring to Exhibit Number 5,  
19 Preamble, page 2, the oath of office, it says, "I,"  
20 blank, "having been appointed a member of the fire  
21 department of the City of Providence, do solemnly swear  
22 that I will support the Constitution of the United  
23 States and of the State of Rhode Island and the  
24 Providence Home Rule Charter, that I will faithfully  
25 discharge the duties of a member of the Providence Fire

1 Department according to the laws, ordinances, rules and  
2 regulations governing the department and will obey the  
3 orders and directions of my superiors to the best of my  
4 knowledge and ability so help me God."

5 Did I read that correctly?

6 A. Yes, sir.

7 Q. Every member of every engine company that ever  
8 responded to a scene with Lieutenant Franchina took  
9 that solemn oath?

10 A. Yes, sir.

11 Q. And as somebody who has been on the department for  
12 over 30 years and reached the highest rank possible, I  
13 would imagine that you more than anyone else takes that  
14 oath very seriously.

15 A. Yes, sir.

16 Q. And you would respond to anybody who violated that  
17 oath with swift remedial action?

18 A. Depending on the violation of the oath of office,  
19 the action and corrective action would be as swiftly as  
20 possible, yes.

21 Q. Now, you talked about sometimes your companies go  
22 out to fight fires, obviously; right?

23 A. Lots of times, yes, sir.

24 Q. Lots of times. And if they fail to fight the  
25 fires, there would be consequences?

1       A.     Well, we would discuss it. You know, depending on  
2       the tactics and strategies and the things that took  
3       place, it's not a perfect environment. So we would  
4       have, you know, general orders reissued, standard  
5       operating procedures reissued.

6               We would meet with company officers and chief  
7       officers to remind them of their duties and  
8       responsibilities, but it certainly isn't as cut and dry  
9       and swift in disciplining everybody every time that it  
10      wasn't a perfect scenario when there's an incident.  
11      That did not happen.

12     Q.     It's not always so cut and dry when it's not a  
13      perfect scenario?

14     A.     That's correct.

15     Q.     Sometimes things are cut and dry, though; right?

16     A.     Some places they may be, yes.

17     Q.     So I'm going to go through a list of rules with  
18      you now, and then we're going to refer to them as we go  
19      through some other exhibits; and if at any point you  
20      don't remember the rule that I'm referring to later,  
21      we'll just bring out the list again. Fair enough?

22     A.     That's fine. Thank you.

23     Q.     Sure. Number 4, "Members shall obey all laws,  
24      rules, regulations, orders and commands. Such  
25      obedience shall be prompt, implicit and unqualified."

1 That's a rule at your department?

2 A. Yes, sir.

3 Q. That's a rule that you enforced?

4 A. Yes, sir.

5 Q. Number 6, "In matters of general conduct not  
6 within the scope of these rules and regulations,  
7 members shall be governed by the customary rules of  
8 good behavior observed by law-abiding and  
9 self-respecting citizens.

10 "In all cases where members conduct themselves  
11 in a manner which may bring reproach or reflect  
12 discredit upon the department, charges shall be  
13 preferred."

14 Did I read that correctly?

15 A. Yes, sir.

16 Q. That was a rule at your department?

17 A. Yes, sir.

18 Q. A rule that you enforced?

19 A. Yes, sir.

20 Q. That one's pretty cut and dry?

21 A. Yes.

22 Q. Rule number 8. There's a few bullets here that  
23 we're going to talk about. A, "They shall not violate  
24 their oath of office." Correct?

25 A. Yes, sir.

1 Q. All right. H, "They shall not use indecent,  
2 profane or uncivil language, nor be guilty of immoral  
3 or indecent conduct." That's a rule?

4 A. Yes, sir.

5 Q. And that one could go either way. Sometimes it  
6 could be cut and dry, sometimes there could be a  
7 certain level of discretion that you would need to  
8 exercise?

9 A. There was discretion certainly with rules and  
10 regulations as chief of the department for infractions  
11 and what the penalty may or may not be.

12 Q. But some things would be clearly immoral or  
13 indecent, and some things would require more  
14 discretion?

15 A. Everything required an investigation to get -- for  
16 us to determine and me as chief to determine what the  
17 infraction was and how we would deal with that  
18 infraction.

19 Q. Everything required an investigation?

20 A. Not everything. I didn't investigate everybody  
21 who used indecent language in a fire station or on a  
22 fire scene.

23 Q. Sure. You wouldn't want to do it in this  
24 courtroom either. We've been doing it all week.

25 A. I haven't been here all week, so I wouldn't know,

1 but no.

2 Q. But certainly there are some allegations that are  
3 so serious that they would warrant an investigation?

4 A. Yes, sir.

5 MR. MARTIN: All right.

6 THE COURT: Mr. Martin, okay time to break?

7 MR. MARTIN: Whatever you say.

8 THE COURT: I mean, if you're about to finish up  
9 a document or there's a better point.

10 MR. MARTIN: This is a great point. Thanks.

11 THE COURT: Ladies and gentlemen, we'll take our  
12 mid-morning break. We'll be back in 15 minutes.

13 Chief, you're under cross-examination now, so  
14 the rule for everyone is that you can't discuss your  
15 testimony with the attorneys for the city while you're  
16 under cross-examination.

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Okay. Thanks.

19 (Recess.)

20 THE COURT: Mr. Martin.

21 MR. MARTIN: Thank you. Could we have the ELM0  
22 on, please.

23 THE CLERK: Sure. What exhibit are we still on?

24 MR. MARTIN: We are still on Exhibit Number 5,  
25 Chapter 16, page 2.



1 THE CLERK: Thank you.

2 Q. I believe we just finished with number H. Moving  
3 on to I, "Members of the department shall not engage in  
4 any altercation, commit an assault, nor violate any  
5 law, nor do anything for which they may be arrested."  
6 Correct?

7 A. Yes, sir.

8 Q. The next one, "No member of the department shall  
9 make a false statement or report with intent to  
10 deceive." Correct?

11 A. Yes, sir.

12 Q. "Or do anything which may bring discredit upon the  
13 department." Correct?

14 A. Yes, sir.

15 Q. Rule number 15 states that, "Officers observing  
16 members in uniform in any public gathering or on the  
17 street or in any public or private conveyance shall  
18 note any actions by such members tending to bring  
19 reproach upon the department and shall take proper  
20 official action." Correct?

21 A. Yes, sir.

22 Q. Rule number 38 says that, "Members shall not at  
23 any time speak disrespectfully of, nor to, any superior  
24 officer of the department." Correct?

25 A. Yes, sir.

1 Q. Number 40, "Members of the department shall  
2 address officers by their proper titles." Correct?

3 A. Yes, sir.

4 Q. And 42, "Whenever a member is working in a unit  
5 other than that member's assigned unit, detail,  
6 call-back or substitution, the member shall personally  
7 report to the officer in command immediately upon the  
8 member's arrival"?

9 A. Yes, sir.

10 Q. All right. For this next one, Chief, same thing.  
11 It's a rather large document. You are entitled to have  
12 the entire document with you or we can go page by page  
13 if that works.

14 A. I think I'll probably, based on all of those rules  
15 you referred to, ask for those documents so I can  
16 review them as you ask me questions.

17 MR. MARTIN: That would be fine. Can he have  
18 Exhibit Number 5, please.

19 THE WITNESS: Thank you.

20 Q. The next document I'm going to be referring to,  
21 Chief, is also a large document. If you want that at  
22 any point, just let us know.

23 A. Thank you.

24 Q. All right. Have you ever reviewed the transcript  
25 of the hearing in which Lori Franchina was seeking a

1       restraining order against Firefighter Sean McGarty?

2       A.    I don't believe I have.

3       Q.    Why not?

4       A.    Because I don't believe I have. There's no  
5       specific reason why I didn't. I just don't believe  
6       that I did.

7       Q.    Okay. When we were talking earlier, you mentioned  
8       that some allegations are clearly important enough to  
9       warrant a thorough investigation; correct?

10      A.    Yes, sir.

11      Q.    In your mind, does an allegation by a female  
12      firefighter that she requires a restraining order to  
13      keep her safe from a male firefighter warrant a  
14      thorough investigation?

15      A.    It warrants an investigation, yes, sir.

16      Q.    Did you commission such an investigation to be  
17      conducted?

18      A.    Yes, sir.

19      Q.    By whom?

20      A.    Chief Morgan and probably other chief officers in  
21      the department.

22      Q.    Maybe Chief Warren?

23      A.    Probably Chief Warren as well. It was probably a  
24      combination of a number of individuals in my command  
25      staff.

1 Q. Do you know if either one of those individuals  
2 attended the hearing?

3 A. I am not certain if they did.

4 Q. Do you know if either one of those individuals  
5 obtained a copy of the transcript?

6 A. I'm not certain if they did.

7 Q. I'd like to show you page number 53 from  
8 Exhibit 20. It starts off, Chief, that, "The Court  
9 makes the following findings of fact. Both of the  
10 parties are firefighters of the Providence Fire  
11 Department. There were previous disagreements" --

12 MR. McHUGH: Objection. Is the jury seeing  
13 this?

14 THE COURT: What exhibit number is this?

15 MR. MARTIN: This is Number 20, your Honor, the  
16 transcript of the hearing admitted in full.

17 THE COURT: Then they should be able to see it.

18 MR. McHUGH: This transcript speaks for itself,  
19 the findings of fact at the end of the decision. I  
20 don't think it should be published.

21 THE COURT: It's a full exhibit. Overruled.

22 Q. It goes on to state, Chief, that, "There were  
23 previous disagreements regarding what happened on a  
24 call in July of 2009."

25 In the course of the investigation that you

1 commissioned, did you learn about a call involving  
2 Firefighter McGarty and Rescue Lieutenant Franchina  
3 from July of 2009?

4 A. I believe there was reference. I don't remember  
5 the specific details of that call, but I believe there  
6 was a reference to a call that they were both on.

7 Q. Thank you.

8 A. I was going to add I don't know the date of when  
9 this actually happened, this hearing.

10 Q. Oh, let me correct that, then. Thank you for  
11 pointing that out. I show you the cover page. It says  
12 Lori Franchina versus Sean McGarty, heard before the  
13 Honorable Justice Lanphear on January 5th, 2010.

14 A. Thank you.

15 Q. Sure. Anything else like that, just let me know.

16 A. Yes, sir.

17 Q. Of course, this was sometime after the meeting  
18 with Olayinka Oredugba that you mentioned you had  
19 sometime in August or September of 2009?

20 A. That she had contacted me, yes.

21 Q. I'm going to refer back to page number 53.  
22 Resuming on page number 6 -- line number 6 where we  
23 stopped, it says these -- and this is under the Court's  
24 findings of fact. "These firefighters, both the  
25 Plaintiff and the Defendant, met at the firefighters'

1 hall in December."

2 Is it a violation of any rule or regulation for  
3 a firefighter or officer on duty to be at the union  
4 hall?

5 A. I don't believe there's a specific rule or  
6 regulation that prohibits them from going to the union  
7 hall.

8 Q. Do they serve alcohol at the union hall?

9 A. They do.

10 Q. Is there a restriction against firefighters or  
11 officers socializing in places that serve alcohol while  
12 they are on duty?

13 A. I believe that there is.

14 Q. "At this fire hall, gestures were made by  
15 Mr. McGarty against Ms. Franchina. The Defendant," and  
16 you know that the Defendant was Sean McGarty?

17 A. Yes, sir.

18 Q. "The Defendant swore. He admitted that he swore,  
19 that each of the parties swore, but he admits that he  
20 swore. And the Court also finds that he blocked the  
21 door. As indicated, even though two of the  
22 firefighters testified that they were there, that they  
23 saw the discussion heat up, that one of the lieutenants  
24 was asked to intervene, neither of them see  
25 Ms. Franchina leave, neither of them see whether or not

1 Mr. McGarty blocked the door."

2 During the course of your investigation, did you  
3 find out the identities of the other firefighters and  
4 the other lieutenants that the Court is referring to?

5 A. I believe we did. I believe we requested Form 17s  
6 from the parties that were involved and were there.

7 Q. Okay. And did you personally review those  
8 Form 17s?

9 A. I believe I probably read them, yes.

10 Q. I will approach the witness with Exhibit 19.  
11 Chief, there's four pages. Would you mind just taking  
12 a read through and then let me know when you're  
13 finished.

14 A. Okay.

15 Q. Chief, those are four Form 17s?

16 A. Yes, sir.

17 Q. Signed by four members of your department?

18 A. Yes, sir.

19 Q. Form 17s that were requested as part of the  
20 investigation that you commissioned into the allegation  
21 made by Ms. Franchina that she'd been assaulted by a  
22 fellow firefighter?

23 A. Yes, sir.

24 Q. Those are documents that you personally reviewed  
25 in connection with your investigation into that

1 allegation?

2 A. I believe I did at the time, yes, sir.

3 Q. And they are in the same or substantially the same  
4 condition as they were when you reviewed them?

5 A. I believe they are.

6 MR. MARTIN: Your Honor, we offer these four  
7 pages as Exhibit Number 19.

8 MR. McHUGH: Objection, hearsay.

9 THE COURT: Overruled. Exhibit 19 will be  
10 admitted as a full exhibit without objection.

11 (Plaintiff's Exhibit 19 admitted in full.)

12 Q. So, Chief, I don't want to make it confusing for  
13 everyone, but we're going to take a break from the  
14 transcript for just a minute and we're going to look at  
15 what the other guys said happened. Okay?

16 A. Yes, sir.

17 Q. Lieutenant Elliot Murphy. You know Mr. Murphy?

18 A. I do.

19 Q. Excuse me, Lieutenant Murphy?

20 A. Yes, sir.

21 Q. All right. So Lieutenant Murphy says --

22 THE COURT: Can you pull that down, Mr. Martin.

23 MR. MARTIN: Yes.

24 THE COURT: There we go. Thanks.

25 MR. MARTIN: Sure.



1 Q. Now, Form 17s, are these -- there's nothing on  
2 here that says that they're signed under the pains and  
3 penalties of perjury; right?

4 A. No, sir.

5 Q. Is there a requirement in the department that  
6 these be signed with some attestation as to the truth  
7 of their contents?

8 A. Generally in this case it would be, or in any case  
9 that someone submits a Form 17 we want them to be  
10 forthright, depending -- in this case it was an  
11 investigation, but Form 17s can come in for someone who  
12 needs a pair of gloves. So it's kind of a -- it's kind  
13 of like our internal document that we use for just  
14 about everything.

15 Q. So the document that people would use to report  
16 claims of sexual harassment is the same type of  
17 document that they would use to request a new pair of  
18 gloves?

19 A. It could be.

20 Q. So he says, "While talking to members about the  
21 previous drill, I was alerted about a heated discussion  
22 between Lieutenant Franchina (off duty) and Firefighter  
23 McGarty. Lieutenant Franchina started to complain to  
24 me. I told her we are all adults here and what do you  
25 want me to do, I am not a baby-sitter here."

1 Did I read that correctly?

2 A. Yes, sir.

3 Q. And then he goes on to say, "From what I  
4 overheard, Lieutenant Franchina was bad-mouthing a  
5 member of Ladder 3 about a rescue run that occurred  
6 months ago, and the member was defending his  
7 reputation."

8 Did I read that correctly?

9 A. Yes, sir.

10 Q. "After the discussion (1-2 minutes) she was  
11 leaving the reception area. Lieutenant Franchina  
12 struck me in my left upper arm in an angry manner and  
13 said thanks, Lieu."

14 Did I read that correctly?

15 A. Yes, sir.

16 Q. He says he didn't know what she meant by the  
17 gesture. Then he goes on to say, "My arm is a little  
18 sore, and I did fill out an IOD form, but I will remain  
19 on duty." Correct?

20 A. Yes, sir.

21 Q. "I am appalled that a fellow officer of the  
22 Providence Fire Department would act in this manner."

23 Did I read that correctly?

24 A. Yes, sir.

25 Q. Did you know that Lieutenant Murphy also went to

1 the police?

2 A. Yes, sir.

3 Q. And when he went to the police, he accused  
4 Lieutenant Lori Franchina of assaulting him?

5 A. Yes, sir.

6 Q. Joseph Colannino, do you know him?

7 A. Yes, I do.

8 Q. Firefighter?

9 A. Yes, sir.

10 Q. He says, starting in the middle, "I was unaware of  
11 any heated discussion between anyone. However, I did  
12 hear and see off-duty Rescue Lieutenant Lori Franchina  
13 walk towards Lieutenant Murphy, shout out, 'Thanks,  
14 Lieu,' as she struck him in the arm."

15 Did I read that correctly?

16 A. Yes, sir.

17 Q. And Joseph Colannino also signed Elliot Murphy's  
18 paperwork that he submitted for injured-on-duty status?

19 A. I don't have that document.

20 Q. Would you like to see it?

21 A. Sure.

22 Q. Here's a copy marked Plaintiff's 40 for the Court.  
23 Take a minute to look through that. When you're done,  
24 Chief --

25 A. I'm all set, sir.

1 Q. That is the injured-on-duty paperwork submitted by  
2 Lieutenant Elliot Murphy?

3 A. Yes, sir.

4 Q. Signed by him?

5 A. Yes, sir.

6 Q. Dated by him?

7 A. Yes, sir.

8 Q. Signed by several other firefighters and members  
9 of your department?

10 A. Yes, sir.

11 Q. Submitted to the Providence Fire Department in a  
12 request for injured-on-duty status?

13 A. Yes, sir.

14 Q. And that's something that you reviewed during your  
15 investigation of this matter?

16 A. Probably would have reviewed this.

17 MR. MARTIN: Your Honor, we offer this as  
18 Plaintiff's 40.

19 MR. McHUGH: My objection is, this is two  
20 documents in one. There's an IOD injury form; but also  
21 attached to it at the back, I don't know why this is  
22 attached, is a Providence Police incident report which  
23 would not be part of an IOD form. So I don't know what  
24 that's doing there.

25 MR. MARTIN: I thought the chief just said it

1 was; but if it's not, we would remove those two pages.

2 THE COURT: Why don't you ask the chief.

3 Q. Were the two pages from the Providence Police  
4 incident report attached to this IOD application?

5 A. I can't be certain. They're not required to be.  
6 An injury report, there's a specific number of  
7 documents that come in with that. I can't recall, sir,  
8 if that was attached to it when it came in.

9 Q. But when I just asked you a few questions and you  
10 testified that it was in the same or substantially the  
11 same condition as it was when you reviewed it in  
12 connection with this investigation, you still stand by  
13 that testimony, don't you?

14 A. I assumed when you gave that to me that that was  
15 the document that came in in total. I can't be sure  
16 whether all of -- that report, police report, that  
17 incident report was attached to it. It's not required  
18 by me or the department. So if it wasn't there, I  
19 wouldn't have noticed that it wasn't.

20 MR. MARTIN: I'll defer to the Court.

21 THE COURT: Let me try and clarify it.

22 Mr. Martin, is that the document in the form that was  
23 produced to you by the city, in the same form as  
24 produced to you by the city?

25 MR. MARTIN: They're not Bates numbered, but

1       this is the order that they came in in the box.

2               THE COURT: That's what you're representing?

3               MR. MARTIN: Yes.

4               THE COURT: Do you know different from that,  
5       Mr. McHugh?

6               MR. McHUGH: The police report would not have  
7       been attached to this. The IOD report, yes, but not  
8       the police report.

9               THE COURT: Here's what we're going to do.  
10       We're going to admit the document except for the police  
11       report.

12              Mr. McHugh, you're going to have someone at city  
13       hall go back and check this document; and if the police  
14       report is attached as it's kept in the ordinary course  
15       of the city's business, then we'll admit it with it  
16       attached; and if it isn't, it will stay as it is  
17       without it attached.

18              MR. McHUGH: That's fine, your Honor.

19              THE COURT: So Exhibit -- I've lost track of the  
20       number.

21              MR. MARTIN: Forty.

22              THE COURT: Forty, without the police report at  
23       this time, is admitted as a full exhibit.

24              MR. MARTIN: Thank you.

25              (Plaintiff's Exhibit 40 admitted in full.)

1 Q. So you know now after looking at Exhibit Number 40  
2 that Joseph Colannino also signed off on the request  
3 for IOD status due to the arm?

4 A. As a witness, yes.

5 Q. Yup. And the allegation was that he had a  
6 contusion or a bruise?

7 A. That's what he said, yes.

8 Q. Another Form 17 submitted by the firefighters at  
9 the union that day was from Derek Silva, and  
10 firefighter -- can you see that okay?

11 A. Yes, I can.

12 THE CLERK: This is part of 40?

13 MR. MARTIN: This is part of 39.

14 MR. McHUGH: This is part of 19.

15 MR. MARTIN: Excuse me, this is part of 19. I'm  
16 sorry.

17 THE CLERK: Okay.

18 MR. MARTIN: Excuse me. Thank you.

19 Q. Firefighter Silva says, "As I left, I saw off-duty  
20 Rescue Lieutenant Lori Franchina strike Lieutenant  
21 Murphy in the left arm with a closed fist and shout,  
22 'Thanks, Lieu,' as she left the hall. I then continued  
23 on my way to Engine 12 which was parked outside."  
24 Correct?

25 A. Yes, sir.

1 Q. And then we have the Form 17 from Firefighter Sean  
2 McGarty. And he says at the bottom, starting right  
3 here, "When the conversation became a little heated,  
4 off-duty Lori Franchina asked to speak to my officer,  
5 Lieutenant Murphy, in which he responded, 'I am not a  
6 baby-sitter here.' Lieutenant Franchina then continued  
7 to exchange words with me and then exited the  
8 building."

9 Did I read that correctly?

10 A. Yes, sir.

11 Q. Did any of the firefighters that you talked to  
12 report to you that they saw Sean McGarty swear at Lori  
13 Franchina?

14 A. I don't believe I talked to the officers.

15 Q. You relied solely on their reports?

16 A. No. I think my chief officers who were involved  
17 with the investigation would have spoken to them. I  
18 don't believe that I, when those Form 17s were  
19 submitted, spoke to them.

20 Q. Let's go back to the transcript. So we stopped at  
21 the conversation -- the colloquy from the Court on line  
22 13. "As indicated, even though two of the firefighters  
23 testified that they were there, that they saw the  
24 discussion heat up, that one of the lieutenants was  
25 asked to intervene, neither of them see Ms. Franchina



1 leave, neither of them see whether or not Mr. McGarty  
2 blocked the door. Therefore, the Court has serious  
3 concerns about the credibility of both of the  
4 lieutenants involved."

5 Did I read that correctly?

6 A. Yes, sir.

7 Q. And both lieutenants you know is in reference to  
8 Lieutenant Robert Jackson and Lieutenant Elliot Murphy?

9 A. Their names aren't here, so I can't be sure. I  
10 can't be sure. The names are not here.

11 Q. Okay. "It's also noteworthy that throughout all  
12 of this discussion, all of the testimony, that at no  
13 point is -- that at no point is Ms. Franchina -- I'm  
14 checking to see whether or not she signs her name as  
15 lieutenant. She does, she signs her name as  
16 lieutenant. But," flip the page, "Mr. McGarty,  
17 Mr. Jackson and I believe Mr. Murphy never refer to her  
18 as a lieutenant. They refer to each other by their  
19 ranks, they refer to Mr. McGarty as a Firefighter 1.  
20 They never refer to an officer as an officer, which  
21 hampers their credibility." Correct?

22 MR. McHUGH: Objection as to form. Correct?

23 THE COURT: Sustained. Why don't you try again,  
24 Mr. Martin.

25 Q. Did I read that correctly?

1       A.    Could you go back because it goes from one page to  
2       the next, I believe, and I'd like to see from one to  
3       the next if that's okay.

4       Q.    Sure.  Let me know when you're ready for me to  
5       flip the page.

6       A.    Okay.  I'm all set with that page.

7       Q.    Do you want me to flip it?  Is that the part that  
8       you wanted more time to read?

9       A.    Yes, sir.

10       MR. MARTIN:  Okay.

11       THE COURT:  Mr. Martin, I'll give the chief my  
12       copy, that way he can have the full one in front of  
13       him.

14       THE WITNESS:  Thank you.

15       A.    I don't know what page this is.

16       Q.    This is page 54, Chief.

17       A.    Thank you.

18       Q.    Sure.

19       A.    Okay.  I'm all set.

20       Q.    Did I read that correctly?

21       A.    Yes, sir.

22       Q.    All right.  And then the next paragraph, the Court  
23       goes on under the findings of fact.  "It's clear that  
24       they're fighting at the scene.  It's clear that they're  
25       having an argument at the scene, not a physical fight.

1 The Court finds that he blocked the door. And the  
2 Court finds also that he spit, although it may not have  
3 been intentional, but he was arguing so loud or  
4 becoming so pointed that it was an obviously  
5 conflicting situation. Ms. Franchina was concerned for  
6 her well-being, even asked an outside source to  
7 intervene, and the outside source, the ranking  
8 lieutenant of Mr. McGarty, did not intervene. Hence,  
9 there does seem to be a need for an injunction."

10 Did I read that correctly?

11 A. Yes, sir.

12 Q. And as you already testified to Mr. McGarty -- to  
13 Mr. McHugh, never before or since in your history with  
14 the fire department have you ever seen such a situation  
15 where a female member of the department was awarded a  
16 restraining order against a male member of the  
17 department?

18 MR. McHUGH: Objection, your Honor, misstates  
19 the testimony.

20 THE COURT: Overruled.

21 MR. McHUGH: That's not what he testified to at  
22 all.

23 Q. Do you believe that to be true?

24 A. No, sir, I did not testify to that.

25 Q. Is that true?

1       A.    Is what true?

2       Q.    Is it true that in the history of the department,  
3       you've never seen a situation in which a female  
4       firefighter has been awarded a restraining order by the  
5       Superior Court to protect her from a male firefighter?

6       A.    I've never seen a restraining order issued in any  
7       case within the department from one member to another  
8       or a female officer with a firefighter, no.

9       Q.    I'm sorry for getting your testimony wrong from  
10       earlier. Now, at the end of this investigation, was  
11       Firefighter McGarty brought up on charges by the  
12       department?

13       A.    I am not sure that the completion of the  
14       investigation and charges were published against  
15       Firefighter McGarty.

16       Q.    You're not sure?

17       A.    I'm not sure.

18       Q.    Okay. Firefighter McGarty went on to retire from  
19       the department?

20       A.    He recently retired, is my understanding, yes.

21       Q.    In good standing?

22       A.    I believe so.

23       Q.    Full benefits?

24       A.    I believe so.

25       Q.    No demotion?

1 A. Not that I'm aware of, sir.

2 Q. No suspension?

3 A. Not that I'm aware of.

4 Q. Elliot Murphy, was he brought up on charges?

5 A. I don't believe so.

6 Q. Does he still work for the department?

7 A. I don't think so. I think he retired.

8 Q. He retired in good standing?

9 A. I believe so.

10 Q. With his officer's benefits?

11 A. Yes, sir.

12 Q. No suspension?

13 A. Not that I'm aware of, no.

14 Q. How about the guys who signed his IOD paperwork --  
15 by the way, did you guys find in the course of your  
16 investigation that Lieutenant Murphy had been assaulted  
17 by Lori Franchina?

18 A. I believe we looked into it as part of the  
19 investigation because he had alleged that. So we did  
20 look into that allegation.

21 Q. And the conclusion of your investigation was that  
22 he had not been assaulted?

23 A. I'm not sure that there was a conclusion to the  
24 investigation, but there were no charges brought  
25 against Lieutenant Franchina for that, for what he

1       alleged and the other members alleged was Lieutenant  
2       Franchina striking him.

3       Q.     Okay. And there were no charges brought against  
4       any of the firefighters who signed those forms based on  
5       the rule that it's a violation to make a false  
6       statement with the intent to deceive?

7       A.     I don't believe any of those firefighters were  
8       brought up on charges.

9       Q.     Do you know if any of the firefighters who were  
10       present were under the impression that Lieutenant  
11       Franchina was filing a lawsuit against the city?

12            MR. McHUGH: Objection, hearsay. How could he  
13       possibly know that? Their impressions?

14            THE COURT: We'll find out. Overruled.

15       A.     Could you repeat the question, please.

16       Q.     Sure. Are you aware of whether or not any of the  
17       firefighters who were present at the union hall were  
18       operating under the impression that Lieutenant  
19       Franchina had filed a lawsuit against the city?

20       A.     I can't be certain if there was a lawsuit being  
21       filed or if they were aware of a lawsuit being filed.  
22       I'm not certain of the answer to that.

23       Q.     Let's go back to Exhibit Number 20. By the way,  
24       Chief, part of the sexual harassment training that we  
25       talked about earlier that you had everybody do in 2010,

1 do you remember that?

2 A. Yes, sir.

3 Q. That policy includes a prohibition against  
4 retaliation?

5 A. I believe it does.

6 Q. And that means that if anybody engages, in your  
7 mind at the time, anybody who engages in a complaint  
8 about harassment or discrimination or retaliation has  
9 engaged in what you referred to as a protected  
10 activity?

11 A. Yes.

12 Q. And by protected, we mean that no one can  
13 retaliate?

14 A. I didn't refer to it, you just did; but yeah,  
15 people should not retaliate if someone files a  
16 complaint. It wasn't even required that Lieutenant  
17 Franchina come to us.

18 Q. So first I'm going to show you -- we're not going  
19 to discuss it long. First I'm going to refer you to  
20 page 27 where it says here that Lieutenant Robert  
21 Jackson is being duly sworn and testifies as follows.  
22 Do you see that?

23 A. Yes, sir.

24 Q. Okay. And I'm going to take you on to page  
25 number 32 of Exhibit Number 20 so we can see Lieutenant

1 Jackson's sworn testimony.

2 By the way, do you know if Sean McGarty had a  
3 lawyer at this hearing?

4 A. He may have. I'm not completely certain.

5 Q. Okay. Page number 32, starting with line 1, "From  
6 lieutenant to lieutenant, I ask you in court, what does  
7 trying to stay clear of me mean?"

8 And Lieutenant Jackson answered, "Prior to that,  
9 you obviously had an issue on the prior run. And  
10 supposedly, through rumor control, you possibly have a  
11 lawsuit and problems against me and other members. So  
12 I just wanted to avoid any conflict. I was made aware  
13 of you being there and stayed on the opposite side of  
14 the hall. That's why I knew you were gone. You were  
15 arguing with Sean. That was the first time I knew you  
16 were back by yourself."

17 Did I read that correctly?

18 A. Yes, sir.

19 Q. Were you aware of the rumor that Lieutenant  
20 Franchina had filed a lawsuit?

21 A. I can't say that I was.

22 Q. You were, however, aware that there was an open  
23 and active investigation into her complaints of  
24 discrimination, harassment and retaliation being  
25 conducted by the EEO officer?



1 A. Yes, sir.

2 Q. And any retaliation based on that investigation  
3 would be a violation of your sexual harassment policy?

4 A. It would be a violation of the policy, sir.

5 Q. Prior to that hearing, there was some  
6 communication going back and forth between your command  
7 staff and the EEO officer?

8 A. Yes, sir. I believe so.

9 Q. And on December -- excuse me, this is Exhibit  
10 Number 11. On Exhibit Number 11, the EEO officer wrote  
11 this note. "Chief Warren informed me that they are  
12 preparing charges against McGarty and against  
13 lieutenant who refused to assist Lieutenant Franchina."

14 Have you ever seen this note before?

15 A. I can't say that I have, no.

16 Q. Well, looking at it now, you see that it's dated  
17 December 22nd of 2009?

18 A. Yes, sir.

19 Q. About two weeks before the January 5th hearing  
20 that we just discussed?

21 A. Yes, sir.

22 Q. Was it your decision that charges should be  
23 preferred against Sean McGarty and the lieutenant who  
24 refused to assist Lieutenant Franchina?

25 A. I believe it says that we were preparing some

1 charges against Firefighter McGarty or -- McGarty and  
2 also against the lieutenant who refused to assist  
3 Lieutenant Franchina.

4 Q. I appreciate that. I understand that that's what  
5 the note says, but I'm asking more about your  
6 recollection. Do you remember if you decided in  
7 December of 2009 to prefer charges against Sean  
8 McGarty?

9 A. We decided to prepare to begin charges against  
10 Firefighter McGarty.

11 Q. To prepare --

12 A. And we were looking into preparing charges against  
13 Lieutenant Murphy as well.

14 Q. Did that ever happen?

15 A. I believe we prepared the charges against McGarty.  
16 I'm not sure that Lieutenant Murphy's resulted in  
17 charges, resulted in us preparing charges. I can't be  
18 sure about that, but I know we were preparing charges  
19 for McGarty.

20 Q. When you say that you believe you prepared charges  
21 against McGarty, is that something that would be in  
22 writing?

23 A. It may be. You know, it's been quite a long time,  
24 but we were looking at preparing charges against him.

25 Q. This is really important. Are there documents

1       that say that charges were ever prepared against Sean  
2       McGarty?

3       A.     I think there were drafts of some charges that we  
4       were preparing, yes.

5             MR. MARTIN: Your Honor, can we approach the  
6       sidebar?

7             THE COURT: Sure.

8             (Bench conference held on the record.)

9             MR. MARTIN: Your Honor, for the purpose of  
10       preserving the record, I would like that the Court  
11       ask -- the Court order the city to confirm whether or  
12       not there are written charges or drafts of charges that  
13       were proffered against Sean McGarty and, if there are,  
14       that they be produced immediately.

15            We specifically asked for all evidence of any  
16       discipline taken against any firefighter in connection  
17       with that.

18            If there are no such documents, which I trust  
19       that there probably aren't, I ask that the jury be so  
20       instructed that no such documents exist.

21            THE COURT: Mr. McHugh.

22            MR. McHUGH: Well, we asked the fire department  
23       for anything in the request for production and so  
24       forth, and we didn't get that; but, I mean, I certainly  
25       can check into it again.

1 THE COURT: I actually think probably what John  
2 is requesting is an affirmation that the city sought  
3 such documents and no such documents exist.

4 MR. MARTIN: Yeah. I don't think --

5 THE COURT: Sounds to me what --

6 MR. MARTIN: There's not one iota of this  
7 sidebar that's in relation to anything that happened  
8 with the city solicitor's office. I just want the jury  
9 to hear that the documents were requested, that a  
10 search was done and none were found.

11 MR. McHUGH: Well, I mean, do you want me to  
12 bring the person over who searches the fire department  
13 for these records?

14 THE COURT: I think how to solve this is I will  
15 instruct the jury right now that counsel have informed  
16 me that a search was done of the city records pursuant  
17 to discovery, which takes place during the trial, and  
18 that the city has represented that no such documents  
19 exist in their records.

20 MR. McHUGH: We didn't find any such records.

21 MR. MARTIN: Perfect. Thank you.

22 THE COURT: What are "such records"? How am I  
23 describing them?

24 MR. MARTIN: Charges or discipline preferred  
25 against Sean McGarty or any other firefighter.

1 THE COURT: Wait a minute. You have to be  
2 careful. Come closer so I can get this right.

3 MS. SABATINI: He said charges. I would say  
4 charges.

5 MR. McHUGH: He said charges against McGarty or  
6 Murphy. That was your specific question.

7 MR. MARTIN: That's true.

8 THE COURT: Charges against McGarty or -- what's  
9 McGarty's rank?

10 MR. McHUGH: Firefighter.

11 THE COURT: And what's Murphy's?

12 MR. McHUGH: Lieutenant.

13 THE COURT: Okay. Thanks.

14 MR. BRAGA: Do you want to just limit this to  
15 this particular incident, just to clarify?

16 MR. McHUGH: What do you mean?

17 MR. BRAGA: Related to what John was --

18 MR. MARTIN: We're happy with the instruction.

19 (End of bench conference.)

20 THE COURT: Ladies and gentlemen, let me tell  
21 you something. In the course of litigation of a case,  
22 each party is allowed to and does routinely ask each  
23 other for production of documents that are in their  
24 care, custody or control. We call it discovery. It's  
25 the discovery phase of litigation after you file a

1 lawsuit.

2 In this instance, the Plaintiff asked the city  
3 appropriately to produce any records from their file  
4 that show any charges that were brought against  
5 Firefighter McGarty or Lieutenant Murphy.

6 The city, after conducting a thorough  
7 examination of their records, found that there were no  
8 such charges found in their records after their review  
9 of all the records of either Firefighter McGarty or  
10 Lieutenant Murphy.

11 Mr. Martin.

12 MR. MARTIN: Thank you.

13 Q. Chief, another step that you took with Lieutenant  
14 Franchina was to ask her to submit things, complaints  
15 in writing, swiftly; is that right?

16 A. I don't know if I used the word "swiftly," and I  
17 don't know that I directly spoke with Lieutenant  
18 Franchina; but I'm sure that we were -- fairly certain  
19 that we were requesting Form 17s from Lieutenant  
20 Franchina as well as any of the other officers or  
21 firefighters who may have been involved.

22 Q. All right. Now, there was some testimony that may  
23 have been confused from the EEO office that I want to  
24 clarify with you.

25 Was it ever your intent that Ms. Franchina was

1 required to call for the assistance of a commanding  
2 officer while responding to the scene of medical  
3 emergencies in the event that she encountered  
4 insubordination?

5 A. Not during the response, but there were orders  
6 from me, and they may have been reduced to writing, I  
7 can't recall all of them, that would have in the  
8 general sense for everybody, if there were any issues  
9 on an emergency scene, that an officer could be  
10 requested by anyone who was there.

11 Q. Now, in your position as the head of the  
12 department, how many employees are there, like 430 at  
13 the time?

14 A. About 439 or so. Somewhere in that area.

15 Q. So you've got to deal with all the safety issues?

16 A. Yes, sir.

17 Q. The personnel issues?

18 A. Yes, sir. Well, eventually, yes, sir.

19 Q. The budget?

20 A. Yes, sir.

21 Q. The politics?

22 A. That wasn't much. Yes, sir.

23 Q. I mean --

24 A. There's a little bit.

25 Q. A little bit of the game?

1       A.    Yes.

2       Q.    You have to do all of this?

3       A.    Politics is not a game, but I had everything to  
4       deal with.

5       Q.    I apologize. I wasn't trying to be flippant with  
6       you. So you rely heavily on your chiefs in times like  
7       these?

8       A.    I rely on a lot of -- I relied on people to relay  
9       information to me to be involved in investigations. I  
10      think I said earlier, I didn't necessarily talk to  
11      everybody. I would give directives, ask people to do  
12      things, tell people to do things. And sometimes we  
13      would reduce it to writing. Other times it would be  
14      verbal.

15      Q.    But, I mean, you can't be everywhere all the time?

16      A.    No.

17      Q.    You need the people below you to be your eyes and  
18      ears?

19      A.    Yes, sir.

20      Q.    And the decisions that you make are only going to  
21      be as accurate or as good as the information you  
22      receive from the people who fill those roles for you?

23      A.    The information and as well as those people in the  
24      capacity of officers and firefighters. Some are better  
25      than others. Some officers were better than others.



1           So it was -- you know, I would issue those. And  
2           what I would get in response to those directives, what  
3           information was brought to me, you know, I would review  
4           and try and issue the appropriate order or the  
5           appropriate discipline, whatever the case may be, the  
6           appropriate budget.

7           Q.    Is there such a thing?

8           A.    What's that?

9           Q.    Is there such a thing as an appropriate budget?

10          A.    You know, we tried. We did the best we could.

11          Q.    All right. I'm just going to go through a couple  
12          of documents that are in evidence right now, and I just  
13          want to know if they made their way to you.

14          A.    Okay.

15          Q.    I'm going to show you Exhibit Number 33, I think.

16                THE CLERK: Oh, sorry.

17          MR. MARTIN: Are you going on strike? Did I  
18          make you work too much?

19                THE CLERK: Sorry about that.

20          Q.    This is a Form 17 submitted by Lori Franchina on  
21          April 30th of 2010; is that right, sir?

22          A.    Yes.

23          MR. McHUGH: I'm going to object. He already  
24          testified, your Honor, that he wasn't there then. He  
25          had left the department in early 2010 or December 2010

1 out sick.

2 MR. MARTIN: I thought he left in December of  
3 2010.

4 A. It was December -- well, I was kind of in and out  
5 in November. And by I think it was around the first  
6 week or so of December, I went off with an illness and  
7 never came back; but I was still technically the chief  
8 for, you know, several months. But I was there  
9 probably through early part of December, in and out in  
10 November, but early part of December 2010.

11 Q. I'm very -- I'm sorry to hear that. When you say  
12 that you were leaving in the November, December area,  
13 is that November, December of 2009 or November,  
14 December of 2010?

15 A. 2010, sir.

16 Q. So you were there in April of 2010?

17 A. Yes, I was.

18 Q. All right. Did you see this form from April 30th  
19 of 2010?

20 A. I may have. Probably. I can't say for certain,  
21 but I may have.

22 Q. Let me bring it up to you and let you read the  
23 whole thing. Just let me know when you're done. Do  
24 you know if you saw that back then?

25 A. I can't recall. I may have, but not -- although

1       these Form 17s say to the chief of the department, not  
2       every Form 17 comes to the chief of the department. So  
3       I can't be completely certain that I did.

4       Q.     I understand.

5       A.     But I may have.

6       Q.     So I won't ask you about the facts in it because  
7       you don't remember, but I want to ask you about a  
8       couple of key issues that I think that you could  
9       testify to.

10            So, again, this is dated April 30th, 2010. And  
11       here in the second paragraph it says, "The purpose of  
12       this statement is to support my repeated verbal and  
13       nonverbal claims of harassment which have been  
14       displayed as both offensive and intimidating behavior  
15       by multiple members but especially the one in question  
16       today, Firefighter 1 Andrew McDougal."

17            Did I read that correctly?

18       A.     Yes, sir.

19       Q.     Is this one of these types of complaints that  
20       would warrant an investigation?

21       A.     I believe Chief Morgan may have looked into this  
22       as well.

23       Q.     And are you familiar at all with the history  
24       between Lori Franchina and Firefighter Andy McDougal?

25       A.     No, sir, I am not.

1 Q. Chief, I'm going to ask you a question, and it's  
2 going to have some foul language. I'm sure you've  
3 heard it before.

4 A. Promise not to bring you up on charges.

5 Q. Appreciate that. In your department with you  
6 enforcing the sexual harassment policy, there's the  
7 first part of the question because it's kind of sloppy,  
8 if a man says to a woman who just filed a sexual  
9 harassment complaint, Who the fuck do you think you  
10 are, are you trying to cost him his fucking job, does  
11 that raise in your mind a concern about retaliation?

12 A. It raises in my mind a concern for a conflict  
13 between those individuals, yes.

14 Q. And if that man then proceeds to kick her out of  
15 meals in the station, does that raise in your mind an  
16 alarm that there may be an issue of retaliation?

17 MR. McHUGH: Objection as to form, the loaded  
18 words and so forth. I don't know where he's going with  
19 this. It's way beyond the scope.

20 THE COURT: Why don't you ask him as a  
21 hypothetical, Mr. Martin.

22 Q. Hypothetically speaking, if that same man were  
23 then to kick her out of meals, would that raise in your  
24 mind a concern that she was being retaliated against?

25 A. It would if I was aware of it.

1 Q. Hypothetically speaking, if that same man then  
2 refused to cook for her, would that raise in your mind  
3 an alarm of retaliation?

4 A. If it occurred and I was aware of it, yes, it  
5 would.

6 Q. And after you instructed in October of 2007 your  
7 officers to review the sexual harassment policy and to  
8 share it with their subordinates, you expected that  
9 every officer would be equipped to deal with a  
10 situation like that?

11 A. It would be expected that they were trained and  
12 should be equipped to deal with situations like that,  
13 yes.

14 Q. And what the officer who learns of something like  
15 that should do is fill out a Form 17 and push it up the  
16 chain of command?

17 A. Yes, sir.

18 Q. So that it can get to you or another chief who can  
19 handle it?

20 A. Yes, sir.

21 Q. Chief, this one's really long. You don't  
22 necessarily have to read the whole thing. You're free  
23 to if you want. Do you recall getting a Form 17 on  
24 November -- oh, November the 12th you weren't there.

25 A. I can't be certain. There was a transition period

1 for me when I wasn't feeling well.

2 Q. I'm sorry to bring that up again.

3 A. That's okay.

4 Q. We'll skip that one. October, were you pretty  
5 much full time still in October?

6 A. I may have. I probably was, yes.

7 Q. So this is three pages. You can read the full  
8 thing if you want, this is Exhibit Number 31, or you  
9 can just take a scan, let me know if you've seen it  
10 before.

11 MR. McHUGH: Your Honor, can the witness be  
12 instructed he has a right to read the entire document  
13 if he wants?

14 THE COURT: I think that's what Mr. Martin said.

15 MR. McHUGH: I don't think so.

16 THE COURT: But you know that, Chief; correct?

17 THE WITNESS: Yes, your Honor.

18 THE COURT: It's Exhibit 31?

19 MR. MARTIN: Exhibit 31.

20 THE CLERK: It's in full.

21 Q. Chief, if I misspoke, I just want to be clear.  
22 Anything I give you, you have a right to take as long  
23 as you want to look at it once, twice, three times if  
24 you need to. Okay?

25 A. Yes, sir. I've seen this document.

1 Q. This is a Form 17 from Lori Franchina dated  
2 October the 12th, 2010?

3 A. Yes, sir.

4 Q. And in this paragraph she writes, "On this run,  
5 along with many others, I continue to experience  
6 behavior by both the engine officers and firefighters  
7 on scene to be what I consider offensive and workplace  
8 sexual harassment. The behavior interferes with my  
9 work performance and is creating an intimidating,  
10 hostile and offensive work environment which is conduct  
11 the City of Providence considers harassment and is  
12 strictly prohibited."

13 Did I read that correctly?

14 A. Yes, sir.

15 Q. All right. Is this one of those complaints that  
16 would warrant an investigation?

17 A. Yes, sir.

18 Q. I know that you said that you did see it. Do you  
19 remember when you saw it?

20 A. Probably around this time because I am aware of  
21 this Form 17 as well as Chief Morgan directing the  
22 members on that run to send Form 17s to the department.

23 Q. And you reviewed their Form 17s as well?

24 A. I can't be certain that I did. I remember reading  
25 this one, and I know that Chief Morgan and I discussed

1 or we discussed somewhere in the office about asking  
2 for Form 17s from the other members on the run. I'm  
3 not sure if I directed that, but I'm fairly certain --  
4 pretty sure that that was done.

5 Q. But you don't remember if you saw the other  
6 people's Form 17s?

7 A. I think I may have without seeing them to be  
8 certain, but I believe I may have in that case.

9 Q. And just like back in December of '09, when you  
10 got those Form 17s, they were actually more about  
11 accusations against Lori than what your investigation  
12 was; right?

13 A. Which Form 17s are you referring to?

14 Q. The ones in October of 2010.

15 A. I'm not sure which Form 17s about Lieutenant  
16 Franchina in 2010, who they were from. I may have.

17 Q. Okay. You discussed before, I believe this is  
18 Exhibit 6, this e-mail?

19 A. Yes, sir.

20 Q. And you did tell Mr. McHugh that this is an order?

21 A. I would have considered it, you know, an order,  
22 yes, that we were giving an order, a directive that,  
23 you know, that we wanted our chiefs, battalion chiefs,  
24 division chiefs, to make sure, because they handled the  
25 manpower, to do their best not to have Firefighter



1 McGarty assigned to a station in this case where there  
2 would be a rescue so as to minimize interaction between  
3 Firefighter McGarty and Lieutenant Franchina.

4 Q. Okay. Did anyone tell you -- any of your officers  
5 tell you that they believed that this was impossible to  
6 enforce?

7 A. Not to my recollection, no.

8 Q. Now, as the chief of the department -- I'm sorry,  
9 were you going to continue?

10 A. It wouldn't be easy because we have shifts that  
11 change and overlap. So it's not an easy thing to do.  
12 There's call-backs. People come in on call-backs. We  
13 were trying here to identify call-backs, substitutions.

14 So there are a lot of moving parts; and where we  
15 may technically start a shift at 0800 hours and 1800  
16 hours, 8 a.m. and 6 p.m., there were people that may  
17 have come in and there were free substitutions for a  
18 couple of hours. We may not get a substitution slip.  
19 They didn't have to supply one.

20 So there are moving parts. It wasn't an easy  
21 thing to do. We were doing our best to make sure we  
22 complied with the directive of keeping Firefighter  
23 McGarty and Lieutenant Franchina apart, apart from an  
24 emergency response where that was beyond our control.

25 Q. Certainly at this point, 2010, you're now 30 years

1 in, right, to your career, almost 30 years with the  
2 Providence Fire Department?

3 A. I'm getting up there, yeah. About 29, 30, yes.

4 Q. When you said 1980, it struck me that that doesn't  
5 seem like it should have been 30 years ago, does it?

6 A. It's 35 or 36 now, but I don't feel that old most  
7 of the time.

8 Q. But, I mean, you were well aware of the  
9 difficulties of getting to the 94 people you need to  
10 run the apparatus when you wrote this order?

11 A. Staffing in the fire department has always been  
12 difficult.

13 Q. And you expected this to be followed like any  
14 other order?

15 A. To the best of everyone's ability, yes.

16 Q. Difficult or not?

17 A. As difficult as it was, we were trying within the  
18 best that we could to issue a directive like this was,  
19 an order it could be considered, to keep Firefighter  
20 McGarty apart from Lieutenant Franchina.

21 Q. And you know that it was violated?

22 A. I understand that it was. There was a day that  
23 Lieutenant Franchina came into the fire station while  
24 Firefighter McGarty was in the station. He was  
25 working, Lieutenant Franchina wasn't, and I believe she

1 came in, and that's how that interaction took place.

2 Q. Well, there's no rule or regulation against her  
3 being at her own station when she's off duty to prepare  
4 paperwork; right?

5 A. There's no rule against anyone from coming into  
6 the fire stations where they work or any other fire  
7 station.

8 Q. None whatsoever?

9 A. None that I'm aware of.

10 Q. So if someone were to suggest that Lori Franchina  
11 was somehow in violation of this order or any other  
12 rule because she was there while she was off duty, you  
13 would disagree with that?

14 A. If there was -- if Lieutenant Franchina came into  
15 a fire station, I mean, she had the ability to come  
16 into stations whether she worked in that fire station  
17 or not.

18 So in this order, we were doing our best to keep  
19 Firefighter McGarty out of fire stations where there  
20 would be a rescue because Lieutenant Franchina was a  
21 rescue officer and in all likelihood would have been  
22 assigned either as her permanent assignment, as a  
23 temporary assignment, as a substitute or as a call-back  
24 to a rescue.

25 So we were doing our best to try and identify

1 any situation where we could limit or prevent any  
2 interaction between the two individuals.

3 Q. Okay. So you know that there is a violation  
4 because Firefighter McGarty went to a station with a  
5 rescue in the first place?

6 MR. McHUGH: Objection. Violation? Form of the  
7 question.

8 THE COURT: I was a little confused. Could you  
9 rephrase that, Mr. Martin.

10 MR. MARTIN: Sure. Let me just think for a  
11 second. Because there's no subject of the verb?

12 THE COURT: It could be.

13 Q. There was a violation of this order when Sergeant  
14 McGarty (sic) just went to the station to work that  
15 day?

16 MR. McHUGH: Objection as to form.

17 THE COURT: Overruled.

18 A. Could you repeat the question?

19 Q. Sure. There was a violation of this order just by  
20 his showing up to work at a rescue that day?

21 MR. McHUGH: Same objection.

22 THE COURT: Overruled.

23 A. I believe whoever -- I don't know how Firefighter  
24 McGarty was assigned to the station on that day or who  
25 made the assignment, but we would have -- I would have

1 preferred a chief and had issued a directive that he  
2 should not be assigned to one of those stations. So  
3 no, I wouldn't have -- he shouldn't have been assigned  
4 there.

5 Q. The order was violated?

6 A. Well, my directive was violated, right.

7 Q. Is a directive different than an order?

8 A. No. This was an e-mail sent out which was  
9 basically an order or directive from me, through me  
10 from Chief Dillon, in total all of us working together  
11 to try and find a way to make this work.

12 As you said earlier, it's difficult to make  
13 staffing happen in the fire department. Sometimes  
14 we're ordering people to stay. I'm required by the  
15 collective bargaining that -- we were required to  
16 maintain a certain level of staffing in the fire  
17 department.

18 So I'm sure -- I assume that whoever was making  
19 these orders and directives and assigning people that  
20 day was doing the best that they could and -- you know,  
21 but there was -- he was assigned to a station where  
22 there was a rescue and that was in contradiction to  
23 this order.

24 Q. I'm sorry.

25 A. It's not an exact science, doing all of this and

1 staffing fire apparatus and interaction and moving  
2 people around to get the appropriate staffing on the  
3 fire department.

4 Q. Okay. So let's assume that you're right and  
5 whoever did the staffing was -- had the best of  
6 intentions but was overworked. I have no qualms with  
7 that. My question is, was the order violated?

8 MR. McHUGH: Objection, again, asked and  
9 answered three times. Objection as to form. That's  
10 his answer.

11 THE COURT: I think he has answered it, but I'll  
12 give you one more shot, Mr. Martin. Objection  
13 overruled.

14 Q. Is the word "violation" to you different than the  
15 word "contradiction"?

16 A. In this case I wouldn't -- because I don't think  
17 this was a direct violation of the order. My  
18 assumption, as you called it, that you would assume, I  
19 try not to assume very much in the fire department.  
20 When we assume, a lot of bad things can happen.

21 So we did our best. I believe as chief, through  
22 my assistant chief, my other chiefs, we did our best to  
23 try and comply with -- and they did, to try and comply  
24 with my directive, my order, whatever you would like to  
25 call it, to keep Lieutenant Franchina and Firefighter

1 McGarty in different locations.

2 When we put this out, as I said, we tried to  
3 identify every possible scenario where they could  
4 interact. And Firefighter McGarty at some point in  
5 time, for whatever reason, however that happened, was  
6 assigned to this station where there was a rescue.

7 I know that they could tell that Lieutenant  
8 Franchina was not working because we had a TeleStaff  
9 system that told us who was on and who was off. So  
10 whoever did it, assigned him there, probably looked and  
11 said Lieutenant Franchina's not working, I'll put him  
12 there even though this was not in concert with the  
13 directive in this e-mail that I had sent out or the  
14 chief had sent out.

15 Q. So this one here says, "Firefighter McGarty is to  
16 be notified of this directive and notified that it is  
17 his responsibility to notify Battalion 3 that he is  
18 requesting a substitution and what company he will be  
19 in. Substitutions are not to be approved for companies  
20 that are housed with a rescue."

21 Did I read that correctly?

22 A. You did. Yes, sir.

23 Q. So you're saying that Firefighter McGarty, because  
24 it was a call-back, did not have a duty to notify  
25 anybody that he was not allowed to be in a rescue?

1       A.     That's --

2               MR. McHUGH:  Objection.  He never said that.  
3     Again, mischaracterizing the testimony, your Honor.

4               THE COURT:  Overruled.

5       A.     Are you talking about item number 3?

6       Q.     Uh-huh.

7       A.     Item number 3 isn't a call-back.  It isn't a  
8     detail.  It's a substitution.  That's a different  
9     thing.  And that's directly referring to if Firefighter  
10    McGarty was going to substitute from someone, for  
11    someone, he needed to notify Battalion 3 where that  
12    was.

13              So if he was going to substitute for George  
14    Farrell and it was in the station, he was required to  
15    let the chief officer, Battalion 3, know that he would  
16    be substituting that day.  That's different than a  
17    call-back.  That's different than a detail.

18    Q.     Okay.  So there was -- was there any order that  
19    attempted to prevent them from coming into contact with  
20    each other when somebody's on a call-back?

21    A.     I believe this was the directive for that.

22    Q.     So this was intended to prevent them from coming  
23    into contact even when Firefighter McGarty was on a  
24    call-back?

25    A.     I believe that that was what I testified to



1 already, that we did the best we could under the  
2 circumstances by developing this, which hadn't been  
3 done before, to try and have Lieutenant Franchina and  
4 Firefighter McGarty not in the same station as much as  
5 we could avoid it.

6 Q. Another option if this was too difficult would  
7 have been to fire Sean McGarty?

8 A. I don't understand your question.

9 Q. You wouldn't have to worry about scheduling  
10 anymore if you fired Sean McGarty?

11 A. I would have had to go through a lot of procedures  
12 to fire Firefighter Sean McGarty; but if I had just  
13 fired him, not something within my purview to just fire  
14 somebody. Departmental charges, there can be verbal.  
15 There's discretion as to what we do as chief officers.

16 There is trial boards, which is the board that  
17 we talked about earlier. There are summary  
18 proceedings, which is that we can issue certain --  
19 bring him up on charges and issue certain punishments  
20 for that. There is a departmental hearing.

21 So there are several different steps short of a  
22 termination, and there was a lot of -- well, there were  
23 several different steps beyond just termination as you  
24 call it or firing someone.

25 Q. And at the end of all those steps, with sufficient

1 information and sufficient evidence, the person gets  
2 fired, right, just like Andre Ferro?

3 A. Not in each one of those steps, no.

4 Q. At the conclusion of all of them, if you do a good  
5 enough job and you have enough evidence, the person  
6 gets fired?

7 A. No. There are investigations that we do that may  
8 just be a verbal discipline. It may be a letter of  
9 reprimand. It could be formal or not. It could be a  
10 verbal reprimand. It could be a summary proceeding,  
11 which had specific things that you could do up to, but  
12 not including, termination.

13 There could be a departmental hearing internally  
14 within the department, and then there would be -- if  
15 your intention was to try and terminate someone's  
16 employment, that would go to -- generally to the trial  
17 board.

18 Q. That is a long list of disciplinary actions that  
19 were at your disposal at the time?

20 A. That's a long list of disciplinary actions that  
21 are contained within the rules and regulations of the  
22 Providence Fire Department that the department could  
23 implement and use.

24 Q. Did you implement or use a single one of them with  
25 Sean McGarty?

1 MR. McHUGH: Objection. Asked and answered  
2 about 10 times now.

3 THE COURT: Overruled.

4 A. We were conducting an investigation, as I  
5 testified earlier. I believe that we were preparing  
6 charges to present to Firefighter McGarty during this  
7 process.

8 Q. I just want to touch on this arbitration thing  
9 with Andre Ferro really quickly. Did you guys actually  
10 show up for the arbitration or was this taken care  
11 of -- was this settlement reached before the  
12 arbitration occurred?

13 A. Who are those guys you would be referring to, sir?

14 Q. You and Andre Ferro.

15 A. I believe I testified that I was there, Assistant  
16 Chief Warren was there, Lieutenant Franchina was there,  
17 our attorney Jeff Kasle was there, Firefighter Ferro  
18 was there, and union representation was there for him.  
19 He had his union representation there.

20 Q. So --

21 A. So yes, sir, I did show up, as you termed it.

22 Q. So Andre Ferro was there with representation?

23 A. Yes, sir.

24 Q. And you were there with representation?

25 A. Yes, sir.

1 Q. Did Lori have representation?

2 A. Yes, sir.

3 Q. Who was her representative?

4 A. The department was representing her and our  
5 attorney.

6 Q. You and your attorney represented Lori?

7 A. I did not represent Lieutenant Franchina. Our  
8 attorney was there to represent the city and the  
9 department.

10 Q. Oh, I see. My question was different. Did Lori  
11 Franchina have representation there?

12 MR. McHUGH: Objection, asked and answered  
13 again.

14 THE COURT: Overruled.

15 Q. Did Lori Franchina have personal representation  
16 there?

17 A. Did she bring an attorney of her own? No, sir.

18 Q. And did you tell her, as you just explained to us,  
19 how difficult it is to go through all the various steps  
20 to fire someone in the collective bargaining agreement?

21 A. I don't believe that I went through -- I can't  
22 recall everything that we talked about, but I don't  
23 believe that I went through each step.

24 He had already been terminated. Firefighter  
25 Ferro had been terminated. So we were there because

1 his union was grieving his termination, seeking to have  
2 him brought back into employment into the department.

3 Q. And the subject of the grievance was that the  
4 Providence Fire Department had made a mistake when they  
5 fired him?

6 A. I'm not going to assume --

7 MR. McHUGH: Objection, misstates the grievance.

8 THE COURT: Overruled.

9 A. I'd have to look at what the grievance said, but I  
10 would --

11 Q. Well, if he had already been fired, why would he  
12 be entitled to reinstatement if you hadn't made a -- if  
13 the department hadn't made a mistake?

14 A. Well, I didn't prosecute the case for Andre Ferro  
15 before a trial board -- against Andre Ferro before a  
16 trial board. I believe I testified that had been done  
17 before me.

18 And the union filed a grievance. We denied it.  
19 I denied it. They filed for arbitration, and we are  
20 required to show up at the arbitration case. In an  
21 arbitration case, I believe I -- that anything can  
22 happen in an arbitration case from, in this case, the  
23 arbitrator upholding the termination or the arbitrator  
24 bringing Firefighter Ferro back without any penalties.

25 But I certainly denied the grievance and took it

1 forward to an arbitration case and was prepared to take  
2 that case forward on behalf of the department and  
3 Lieutenant Franchina.

4 Q. And it's your testimony that Lori Franchina, when  
5 faced with an opportunity to take a stand in this  
6 arbitration, she backed down from a fight?

7 MR. McHUGH: Objection as to form, your Honor,  
8 argumentative.

9 THE COURT: Overruled.

10 A. What I said was that Lori Franchina was there,  
11 Lieutenant Franchina was there, and we did not make  
12 that decision without her agreeing and saying it was  
13 okay.

14 I would have not allowed Firefighter Ferro his  
15 job back without going through an arbitration case and  
16 without coming to an agreement, and specifically the  
17 last bullet in that said that all parties were in  
18 agreement.

19 Chief Warren signed that while we were there,  
20 and then it became stipulated by the arbitrator; but I  
21 did not go there in that arbitration hearing, deny a  
22 grievance, go forward with the arbitration to just undo  
23 something without -- and I wouldn't have undone,  
24 although it was -- it would have been in my ability to  
25 do that short of the arbitration case, I did not.

1 I took the arbitration case forward on behalf of  
2 the department and on behalf of Lieutenant Franchina to  
3 an arbitration case, and she had the ability that day  
4 and did say it was okay for us to settle that case with  
5 those stipulated agreements and that stipulated  
6 arbitration agreement. I didn't make that decision  
7 independent of Lieutenant Franchina.

8 Q. You had Chief Warren. He signed something?

9 A. I believe he was the signator with chief -- with  
10 Andre -- Firefighter Ferro on that agreement, and then  
11 it was stipulated through the arbitrator.

12 Q. Did you have her sign anything?

13 A. I don't believe that Lieutenant Franchina did.

14 THE COURT: Mr. Martin, is this a good time for  
15 a lunch break?

16 MR. MARTIN: Yes. Thank you.

17 THE COURT: Ladies and gentlemen, we're going to  
18 take the lunch break now. We'll see you back in about  
19 an hour.

20 (Recess.)

21 THE COURT: Good afternoon, everyone. Anyone  
22 try the trucks? How did you like it?

23 JUROR: It was good.

24 THE COURT: I think there were just three out  
25 today, so there were long lines; but this is the first

1 really good Thursday weather we've had. I think it's  
2 brought a lot of extra people out.

3 MR. McHUGH: Your Honor, we checked our response  
4 to the request for production, and there was no police  
5 report attached to the IOD report that we produced.

6 THE COURT: Great. Thanks, Mr. McHugh. So the  
7 exhibit will stay as admitted.

8 Mr. Martin.

9 Q. Good afternoon, Chief.

10 A. Good afternoon, sir.

11 Q. On direct examination, you were asked if you had  
12 confidence in the officers under your command. Do you  
13 recall that?

14 A. I believe so, yes, sir.

15 Q. And your answer was yes, that you do?

16 A. I do, sir. I did, in the past tense. I did, sir.

17 Q. And that includes their ability to investigate and  
18 respond appropriately to allegations of sexual  
19 harassment?

20 A. To the best of their abilities, I did, yes.

21 Q. Did that include at the time captain, now chief,  
22 but at the time Captain Al Horton?

23 A. I believe so, yes.

24 Q. Were you aware that Al Horton had observed or had  
25 reported to him that Andy McDougal said to Lori



1 Franchina, Who the fuck do you think you are, are you  
2 trying to cost him his fucking job, in regards to Andre  
3 Ferro?

4 A. I was not aware of that, sir.

5 Q. Does that change your opinion as to whether or not  
6 you have confidence in his ability to respond  
7 appropriately to complaints of sexual, or observations  
8 of sexual harassment?

9 A. I have no idea what he did with that information  
10 because I was not involved in that investigation or  
11 that trial, sir.

12 Q. If I were to tell you that he did not forward that  
13 information to any superior officer in any way  
14 whatsoever, would that change your opinion?

15 A. I would be disappointed in that, sir.

16 Q. Does that -- does your confidence in your officers  
17 also include Scott Mello?

18 A. Not so much, sir.

19 Q. Could you please explain.

20 A. He really -- he was a captain in the fire  
21 department, but he was not one of the people that I  
22 looked up to.

23 Q. Could you tell us why.

24 A. Just because he wasn't. We didn't have a very  
25 good relationship either through union business and

1 things like that. So although he was a captain, he  
2 wasn't one of the people that I would have relied on.

3 Q. How about Jeffrey Crawford?

4 A. Yes, sir.

5 Q. You found him to be someone whom you could rely  
6 on?

7 A. Yes, sir.

8 Q. And you could count on?

9 A. Yes, sir.

10 Q. Have you seen a report in which the EEO officer  
11 claims that Chief Crawford believed that 90 percent of  
12 what Lori Franchina complained about was true?

13 A. I did not see that report, sir.

14 Q. How about Chief Curtis J. Varone?

15 A. Yes, sir.

16 Q. Someone that you could count on?

17 A. I believe so, sir.

18 Q. And someone that you could trust?

19 A. Yes, sir.

20 Q. Are you aware that he testified that when he  
21 retired, he was afraid that Lori Franchina would be  
22 retaliated against because of her complaints about  
23 Andre Ferro?

24 A. No, I was not aware of that, sir.

25 MR. MARTIN: I have nothing further, your Honor.

1 THE COURT: Thanks, Mr. Martin.

2 Mr. McHugh.

3 MR. McHUGH: I believe it's Exhibit 20, your  
4 Honor, I wanted to put on the ELM0, the transcript of  
5 the hearing before Justice Lanphear.

6 **REDIRECT EXAMINATION**

7 **BY MR. McHUGH:**

8 Q. Chief, what I wanted to do was to show you the  
9 portion that Mr. Martin read and then show you the  
10 portions that he didn't read. And it begins on page 53  
11 of the transcript, the last paragraph.

12 I'll just read this, and you can tell me if I  
13 read it correctly. This is Judge Lanphear. "It is  
14 also noteworthy that throughout all of this discussion,  
15 all of the testimony, that at no point is -- that at no  
16 point is Ms. Franchina -- I'm checking to see whether  
17 or not she signs her name as lieutenant. She does, she  
18 signs her name as lieutenant. But" -- if you go over  
19 to page 54 -- "Mr. McGarty, Mr. Jackson and I believe  
20 Mr. Murphy never referred to her as lieutenant. They  
21 refer to each other by their ranks, they refer to  
22 Mr. McGarty as a Firefighter 1. They never refer to an  
23 officer as an officer, which hampers their  
24 credibility."

25 So Mr. Martin was saying that Judge Lanphear was

1       questioning their credibility because they did not  
2       refer to Ms. Franchina as lieutenant.

3               Now I want to read to you the part that  
4       Mr. Martin did not read. If you look at page 17, this  
5       is the examination of Lieutenant Elliot Murphy. And on  
6       page 18 down at the bottom, line 21, the attorney asks  
7       Lieutenant Murphy, "Did you hear Sean McGarty and Lori  
8       Franchina argue?"

9               Answer, "I did not, not until I was notified by  
10       Lieutenant Franchina."

11              So there Lieutenant Murphy refers to  
12       Ms. Franchina as Lieutenant Franchina; correct?

13       A.     That's correct.

14       Q.     Now, if you go over to page 34 and you see the  
15       testimony of Firefighter Michael Evora, do you see  
16       where it says Firefighter Michael Evora is sworn in?

17       A.     Yes, sir.

18       Q.     And you look at questioning of Michael Evora on  
19       page 35, line 23, he asks, "And who was involved in the  
20       argument?"

21              And Firefighter Evora says, "Lieutenant  
22       Franchina and Sean McGarty."

23              So there's another instance where that wasn't  
24       true that Evora did not call Franchina lieutenant;  
25       correct?

1 A. That's correct.

2 Q. And if you go to page 39, which is the testimony  
3 of Firefighter McGarty, do you see where he's being  
4 sworn in there?

5 A. Yes, sir.

6 Q. And then if you look at the transcript on page 42,  
7 question, "Now, did a conflict arise concerning how to  
8 handle this particular call?"

9 Answer, "Um, under the circumstances, when we  
10 were up there, Lieutenant Franchina never entered the  
11 room to look at the severity of the wound."

12 So there's another instance where that was wrong  
13 when you were cross-examined that Sean McGarty never  
14 referred to Lori Franchina as Lieutenant Franchina in  
15 this hearing; right?

16 A. That's correct.

17 Q. Because he does; right?

18 A. Yes, sir.

19 Q. Chief, I'm finished asking you about that. Now,  
20 you could have settled that grievance of Andre Ferro  
21 without the permission of Lori Franchina; correct?

22 A. Yes, sir.

23 Q. But you wanted to make sure that she was satisfied  
24 with the settlement; correct?

25 MR. MARTIN: Objection.

1       A.    Yes, sir.

2               MR. MARTIN:  Leading.

3               THE COURT:  Sustained.

4       Q.    Did you want to make sure she was satisfied with  
5   the settlement?

6               MR. MARTIN:  Objection.

7       A.    Yes, sir.

8               MR. MARTIN:  Leading.

9               THE COURT:  Sustained.

10      Q.    Why did you want Lori Franchina's approval for  
11   that settlement?

12      A.    Because we wouldn't have gone forward without it.  
13   I would not have settled.  Chief Warren and myself had  
14   discussed that we would not have settled without  
15   agreement with Lieutenant Franchina.

16      Q.    Okay.  Now, Chief, do you think that a firefighter  
17   who just hollers at another firefighter should be  
18   terminated?

19      A.    No, sir.

20      Q.    Do you think that a firefighter who just swears at  
21   another firefighter should be terminated?

22      A.    No, sir.

23      Q.    Do you think that a firefighter who gets into an  
24   argument with another firefighter should be terminated?

25      A.    No, sir.

1 MR. McHUGH: Thank you, Chief.

2 I have nothing further, your Honor.

3 THE COURT: Great. Thanks. Chief, you can step  
4 down. Thank you.

5 Mr. McHugh.

6 MR. McHUGH: Paul Tang, please.

7 THE COURT: Mr. Tang, if you'd just come right  
8 up to the witness stand here and then remain standing,  
9 and Ms. McGuire will swear you in.

10 **PAUL TANG, DEFENSE WITNESS, SWORN**

11 THE CLERK: Would you please state your name and  
12 spell your last name for the record.

13 THE WITNESS: Paul Tang, T-A-N-G.

14 THE COURT: Mr. Tang, just get yourself  
15 comfortable, pull the chair all the way in, and then  
16 pull the microphone in so that you can speak right into  
17 it. The whole base moves.

18 Mr. McHugh.

19 MR. McHUGH: Thank you, your Honor.

20 **DIRECT EXAMINATION**

21 **BY MR. McHUGH:**

22 Q. Good afternoon, Firefighter Tang.

23 A. How are you, sir?

24 Q. Good. How are you doing?

25 A. Good.

1 Q. Could you tell us when you began on the Providence  
2 Fire Department, please.

3 A. In 2007. I joined the academy in January 2007,  
4 got on in July.

5 Q. Of 2007?

6 A. Correct.

7 Q. And which academy was that that you went to?

8 A. The 47th.

9 Q. And what was your first assignment out of the  
10 academy?

11 A. I was assigned to Ladder 5 over at Broad Street  
12 for three months and then Engine 10, same station, for  
13 about three months.

14 Q. Did you have the same duties and responsibilities  
15 on Engine 5, did you say?

16 A. Ladder 5.

17 Q. Ladder 5 as at Engine 10?

18 A. No, it's different.

19 Q. What were your duties and responsibilities on  
20 Ladder 5?

21 A. Just ladder work pretty much depending on where  
22 you were called and how you arrived. Every duty was  
23 kind of different.

24 Q. Okay. And what about on Engine 10, did you say?

25 A. Correct. We did everything fire-related along



1 with EMS; and, like I said, depending on how you were  
2 called, your duties were assigned differently.

3 Q. And where did you go next?

4 A. From there I went to Ladder 4 over at North Main  
5 Street.

6 Q. Okay. And what were your duties and  
7 responsibilities at Ladder 4 on North Main Street?

8 A. Just about the same except for lots of cardiac  
9 studying at the time.

10 Q. Cardiac studying?

11 A. Yes.

12 Q. Why was that?

13 A. We had to obtain our cardiac EMT license within  
14 about 18 months of being on the job. So I was hitting  
15 the books pretty hard then.

16 Q. Okay. Did you already have the EMT-Basic when you  
17 came on the job?

18 A. Correct.

19 Q. So it was the cardiac you had to get afterwards?

20 A. Yes, sir.

21 Q. And how long were you at North Main Street for?

22 A. Approximately a year and four months.

23 Q. Where did you go next?

24 A. I obtained my cardiac license there, and from  
25 there I went to Rescue 3 at Branch Ave.

1 Q. Okay. As a rescue tech?

2 A. Correct.

3 Q. And how long were you at Rescue 3 on Branch Ave.?

4 A. That was my first six-month tour. You do  
5 six-month tours at a time.

6 Q. And what were your duties and responsibilities as  
7 a rescue tech on Rescue 3?

8 A. Just perform EMS runs, patient care, anything the  
9 officer really told you to do.

10 Q. Okay. And when you left Branch Avenue, where did  
11 you go?

12 A. From there, I liked it, so I bid over to Ladder 7,  
13 which is in the same station, and hung out with the  
14 guys there.

15 Q. So Ladder 7 at Branch Avenue?

16 A. Correct, with Chief Mello now, then the captain.

17 Q. When you said you liked it, you mean you liked the  
18 Branch Avenue Station?

19 A. Yeah. It was fun. I liked it, and I stayed there  
20 for a while. Good people.

21 Q. How long did you stay there for?

22 A. Two years.

23 Q. And then where did you go?

24 A. Engine 11 over at Reservoir Ave.

25 Q. So you still stayed on an engine company?

1 A. Yes.

2 Q. And after that?

3 A. Where I am now, which is Engine 8 at Messer Street  
4 where I wanted to be since I got on.

5 Q. Okay. So you left Engine 11 and went over to  
6 Engine 8 on Messer Street?

7 A. Correct.

8 Q. Why did you want to be on Messer Street?

9 A. I was born and raised in Providence, and that was  
10 in the West End, too, so if I could give back to the  
11 community.

12 Q. I figured you were going to say you came from the  
13 West End. So how long have you been over at Messer  
14 Street?

15 A. Now it will be a year and six months, I believe.

16 Q. So how long have you been on the fire department  
17 total?

18 A. Nine years.

19 Q. And your rank is what?

20 A. Firefighter 1.

21 Q. Now, when you were at Branch Avenue with the  
22 rescue, did you ever work with Lori Franchina?

23 A. Yeah, numerous times.

24 Q. Okay. And was she the lieutenant and you were the  
25 tech?

1 A. Correct.

2 Q. Can you tell the jury what it was like working  
3 with Lori Franchina.

4 A. It was tough sometimes, like walking on eggshells,  
5 because it was kind of like a roller coaster. You  
6 didn't know who you were getting sometimes. She'd snap  
7 at you one time and then be your buddy the next.

8 And then she'd like something a certain way,  
9 like an IV bag -- we have drip sets in the truck. It  
10 sits in the middle, and we leave it kind of set up,  
11 ready to go. She would complain about having it one  
12 way and then the next week having it another way. So  
13 it's tough to work with that all the time, like. It  
14 was an emotional roller coaster, I guess you could say.

15 Q. And let me ask you about a specific run on  
16 July 29th, 2009, on Job Street. Do you remember that?

17 A. Yes, I do.

18 Q. And you were working that day?

19 A. Yes.

20 Q. Was that days or nights?

21 A. I think it was a day shift, and it was towards the  
22 end of a day shift.

23 Q. What would be the end of a day shift?

24 A. Three, four o'clock, right towards the end, three,  
25 four o'clock.

1 Q. And what time do you come in in the morning for  
2 that?

3 A. Seven.

4 Q. And were you working with Lori Franchina that day?

5 A. Yes. I'm not sure who was there already or coming  
6 from a call-back or coming from home, but yeah. We're  
7 not normally assigned together. When you work  
8 overtime, my officer was out a lot, and she would be  
9 working with me and vice versa.

10 Q. So on that day, July 29th, 2009, Lori Franchina  
11 was the rescue lieutenant and you were the tech?

12 A. Yes, sir.

13 Q. Do you remember what the call was for on Job  
14 Street?

15 A. I kind of do. I think it was for a possible  
16 suicide by gunshot.

17 Q. Okay. And did you leave to go there from the  
18 Branch Avenue Station or from somewhere else?

19 A. I'm not 100 percent sure. I can't remember, sir.

20 Q. Okay. When you arrived, was an engine company  
21 already there?

22 A. Yes. Engine 12 was already there.

23 Q. Who were the members of Engine 12, do you  
24 remember?

25 A. I know for certain it was Robert Jackson, Sean

1 McGarty and Tim Kelly.

2 Q. Kelly?

3 A. Yes. There should be a fourth, but I can't  
4 remember who it was.

5 Q. Okay. So there was an engine company there  
6 already. Was there anyone else there?

7 A. The police were on scene, also the detectives and  
8 just the suits.

9 Q. Police detectives and what else did you say?

10 A. Just the patrolmen.

11 Q. Okay. Was that a one-family house, two-family?

12 A. It was at least a two. I think it was either -- I  
13 know it was at least the second or third floor that we  
14 went to. It was at least a two-family.

15 Q. All right. When you got there, were the members  
16 of Engine Company 12, were they inside or outside?

17 A. They were inside.

18 Q. What about the police?

19 A. They were also inside and one detective outside  
20 speaking to a female.

21 Q. Okay. So as soon as you got there, did you go  
22 inside?

23 A. Yes, we did. We went right upstairs, bypassed the  
24 detective speaking to the woman, the frantic woman, and  
25 we made our way upstairs.

1 Q. Now, when you say a frantic woman, did you find  
2 out who she was?

3 A. I never found out who she was.

4 Q. Okay. What do you mean when you say she was  
5 frantic?

6 A. She was just crying in a -- hysterically and just  
7 a mess. The detective was trying to calm her down. I  
8 didn't see her too long. We just went around the  
9 corner and right up the stairs.

10 Q. Okay. So when you entered -- it must have been an  
11 apartment, then?

12 A. Yes.

13 Q. When you entered the apartment, what did you  
14 observe?

15 A. As we were going up the stairs, an officer was  
16 coming down.

17 Q. When you say officer, police officer?

18 A. Correct. A police officer was coming down, and he  
19 made a comment of saying -- just shook his head, he's  
20 dead. And then this is when at the time Lieutenant  
21 Franchina said, shouting, I'll make the decision. I'll  
22 decide that. Then that's when we made our way  
23 upstairs.

24 Q. Was this police officer in uniform or out of  
25 uniform?

1       A.    He was just a regular patrolman, just regular  
2       uniform.

3       Q.    Okay. Did he say anything to Lieutenant Franchina  
4       when she hollered, I'll make the decision on that?

5       A.    No. We just kind of made our way up, and he made  
6       his way down.

7       Q.    Okay. What happened when you got inside the  
8       apartment?

9       A.    Members from Engine 12 were sitting outside the  
10      room. I remember when we walked up the stairs, the  
11      doorway, and then his bedroom was, like, to the right,  
12      like, 2:00.

13      Q.    When you say his bedroom, you mean the patient?

14      A.    Correct. Where the patient was lying in his  
15      bedroom was to the right when we walked through the  
16      door, and the members of Engine 12 were outside of the  
17      room with a few police officers inside of the room.

18      Q.    So there were -- the members of Engine 12 were in  
19      the apartment but outside of the bedroom?

20      A.    Correct.

21      Q.    But the police officers were inside the bedroom?

22      A.    Correct.

23      Q.    How many police officers were inside the bedroom?

24      A.    At least two.

25      Q.    Uniform or non-uniform?



1 A. Uniform.

2 Q. So what happened -- what did you observe when you  
3 walked into the bedroom?

4 A. I saw the victim on the bed lying on his back.  
5 His bed was to the left, and I noticed a shell casing  
6 on the ground first because I could see it -- as I'm  
7 coming up the stairs, I could see the floor easily.

8 And then I walk in the room, and the patient has  
9 a gunshot wound to the right side of his head and a  
10 huge knot, looks like an egg, where the bullet I guess  
11 didn't exit and it must have rattled around in there.

12 And there was some brain matter but nothing  
13 excessive, I guess you could say, for something that  
14 violent, I guess.

15 Q. Where did you see the brain matter?

16 A. It was very little on the -- on his -- where the  
17 entrance wound was and a little bit on the bed, but it  
18 wasn't much at all. There wasn't even much blood, I  
19 don't think. That's all I --

20 Q. There wasn't much blood when you went to the  
21 apartment?

22 A. I didn't think there was much blood. I've seen a  
23 lot of blood and -- strange, actually.

24 Q. I'm sure by that time, 2009, you had been on quite  
25 a few calls yourself.

1 A. Yeah. Being on Rescue 3, you get a lot of --

2 Q. Is that a busy rescue at Branch Avenue?

3 A. Oh, yeah.

4 Q. So what happened next?

5 A. That's when Lieutenant Franchina said she wanted  
6 to work the patient, and --

7 Q. What does that mean?

8 A. Pretty much perform any life-saving techniques we  
9 can provide the patient, whether it be CPR, medication,  
10 defibrillate the patient, whatever it may be. Whatever  
11 the patient might need, we would intervene and provide  
12 that.

13 Q. What happened next?

14 A. It was kind of strange because the whole scene  
15 right from the get-go looked like a crime scene, so  
16 everybody was kind of hesitant to move around or touch  
17 anything because we're taught to leave everything alone  
18 if it's a possible crime scene.

19 Q. Why do you say it looked like a crime scene?

20 A. Considering the patient, I thought he was dead as  
21 well, and the police officers claimed he was gone, too.  
22 So that's why everybody kind of just stood there at the  
23 time.

24 And then she made the call to work the patient,  
25 and she directed me to go downstairs to go get the

1 stair chair.

2 Q. So when you got there, you didn't take the stair  
3 chair up with you?

4 A. No. She said, Let's see what we've got,  
5 considering the call, whatever it may be; but that's  
6 what I remember.

7 Q. So when you got upstairs, she told you to go get  
8 the stair chair?

9 A. Yes, sir.

10 Q. Did you follow her order?

11 A. Yes.

12 Q. Okay. What happened -- what happened on your way  
13 down, anything?

14 A. Yeah. I go running down the stairs, and the  
15 detective that's speaking to the lady is still there,  
16 and she kind of was taken back because as fast as I was  
17 going around the corner, I guess. As I made my way  
18 back with the chair, she's like, What are you guys  
19 doing? Since when do you guys transport dead bodies?

20 And I'm just following orders. So I just made  
21 my way up the stairs with the chair and set it up and  
22 got the patient packaged and ready to go downstairs.

23 Q. All right. You said you set up the stair chair.  
24 How do you do that?

25 A. It's just a collapsing chair. One of the levers

1 turns it into a regular chair. It comes in real narrow  
2 and just cover it with a sheet and place the patient on  
3 there. There's a bunch of belts you can put in  
4 different configurations depending how you want to  
5 carry the patient.

6 Q. So did you set up the stair chair next to his bed?

7 A. Yes, sir.

8 Q. And how did you get him out of the bed?

9 A. We lifted him up, and we wrapped him up. We just  
10 picked him up from where he was. I believe we used a  
11 sheet just to wrap him up and contain him.

12 Q. Now, who is "we"?

13 A. Me and everybody from Engine 12, pretty much.

14 Q. Oh, so the members of Engine 12 assisted you?

15 A. Yes.

16 Q. So all the members of Engine 12 helped you put the  
17 body in the stair chair?

18 A. Yes, sir.

19 Q. And what was Lieutenant Franchina doing at this  
20 time?

21 A. She was arguing with the detective because the  
22 detective was still upset about the transportation of  
23 the possible -- nobody knew if it was a murder victim.  
24 It was just a person there with a gunshot wound to the  
25 head.

1 Q. Where was she arguing with the detective?

2 A. I believe it was outside the room. I wasn't  
3 paying attention much because we were loading the  
4 patient. It was me, Sean and Tim. And Bo Jackson was  
5 there. I don't know specifics on who was doing what,  
6 but I'm pretty sure all hands were on deck at the time.

7 Q. So then you, along with Bo Jackson -- was that  
8 Lieutenant Jackson?

9 A. Yes, sir.

10 Q. Sean McGarty?

11 A. Correct.

12 Q. Tim, was that Tim Kelly?

13 A. Correct. I believe it was Tim Kelly.

14 Q. And was there one other person you mentioned?

15 A. I can't remember who it was. I'm still trying  
16 to --

17 Q. But there were -- so there were four other members  
18 there?

19 A. Yes, sir.

20 Q. So the five of you put the individual in the stair  
21 chair?

22 A. Yes, sir.

23 Q. And while you were doing this, Lieutenant  
24 Franchina was outside arguing with the detective?

25 A. Yes. I don't know what they were arguing about or

1       whatever it was. I know there was a lot of shouting;  
2       but I was instructed to have the patient packaged and  
3       ready to go, and that's what we did.

4       **Q.** And the detective that Lieutenant Franchina was  
5       arguing with, was that a male or a female?

6       **A.** That was a female.

7       **Q.** Was she the one that you had seen downstairs when  
8       you came running outside?

9       **A.** Yes.

10      **Q.** Okay. What happened next? Where were the uniform  
11      police officers when you and the members of Engine 12  
12      were putting him in and Lieutenant Franchina was  
13      arguing?

14      **A.** They were inside the room; and then once we  
15      started packaging him up, they kind of made their way  
16      out and let us do what we had to do. They tried to  
17      protect as much as they could with the shell casing and  
18      the firearm sitting right on the bed, too.

19      **Q.** Okay. So did the five of you carry the patient  
20      downstairs?

21      **A.** Yes. Sean had the top. The stair chair is pretty  
22      much like this with a handle on the back and two  
23      extending handles by the feet. And Sean had the top, I  
24      had the bottom left, and I'm pretty sure it was Tim  
25      Kelly but it could have been the other member on the

1 bottom right because the stairs were steep and those  
2 chairs are very awkward to carry, especially with  
3 somebody, like, dead weight on there.

4 So we're trying to work him down on top, and now  
5 he's starting to bleed a little bit more because of the  
6 head wound and everything. So we tried to wrap that up  
7 at the same time and work our way down in a timely  
8 manner.

9 Q. Okay. How long do you think it took you to get  
10 downstairs?

11 A. A minute or two, tops.

12 Q. So when you get outside, what happened?

13 A. That's when the detective is still going back and  
14 forth. We work our way around the back door, down the  
15 driveway into the back of the rescue; and I get the  
16 stretcher out to load the patient from the chair onto  
17 the stretcher so we can start performing what we need  
18 to do.

19 Q. So you get the patient to the rescue, and then you  
20 get the stretcher out of the rescue?

21 A. Yes, sir.

22 Q. And then did the five of you load the patient onto  
23 the stretcher?

24 A. Yes, sir.

25 Q. And where was Lieutenant Franchina?

1       A.     Still a shouting match. I don't know where it  
2       was, but we were actually kind of upset because me  
3       being new to rescue, I need a little bit more  
4       direction. That's why they give us six-month tours, is  
5       to help us with our EMS skills and allow the officer to  
6       train us in a manner that we're self-sufficient.

7               So I'm still learning at the same time. So I'm  
8       waiting for her to come help guide me because I'm  
9       not -- I just got my cardiac, so I'm still learning at  
10      the time. So not having her there was upsetting, I  
11      guess, looking for direction.

12      Q.     And she was arguing with the female detective?

13      A.     Yes, sir.

14      Q.     Was that outside or inside?

15      A.     That came outside.

16      Q.     They were still arguing outside?

17      A.     Yes, sir.

18      Q.     So did the five of you actually, you and the  
19      members of Engine 12, put the patient on the stretcher?

20      A.     Yes, sir.

21      Q.     Did you get him in the rescue?

22      A.     Yes. And that's when the detective made her way  
23      to the back and asked if she could place paper bags on  
24      the patient's hands to, I guess, protect any evidence  
25      of GSR maybe.



1 Q. What is GSR?

2 A. Gunshot residue, I believe.

3 Q. Okay. And who did she ask if she could put the --

4 A. She asked me because I was closest to the back.

5 Q. Where was Lieutenant Franchina then?

6 A. I did not know where she was at the time.

7 Q. So what did you tell the detective?

8 A. I said, Sure, go ahead. I just allowed her to do

9 what she had to do while we were still trying to

10 perform what we have to perform.

11 Q. Was this the female detective?

12 A. Yes, sir.

13 Q. Now, the rescue -- can you tell the jury how big

14 the rescues are in the back.

15 A. Oof. Maybe a small little corridor, I guess you

16 could say. It would probably fit two of me, and that's

17 not even working comfortably. Then you have an officer

18 seat. It's very tight. So with more than any -- more

19 than three people, it's tough to operate.

20 Q. So you have the patient in the back?

21 A. Yes.

22 Q. You were in the back?

23 A. I was in the back, the patient. Bo Jackson was in

24 the officer's seat.

25 Q. Is the officer's seat in the back?

1       A.    The officer's seat is right at the head of the  
2       patient.  So the stretcher slides in from the back of  
3       the rescue, and it goes right to the feet of the  
4       officer so the officer can oversee all the operations  
5       going on.

6       Q.    Okay.  And anyone else in the back of the rescue  
7       then?

8       A.    At the time I believe it was at least me, Bo --  
9       Robert Jackson, I'm sorry, and Sean and Tim.

10      Q.    And Lieutenant Franchina still wasn't in the back?

11      A.    No.

12      Q.    Even after you loaded the patient?

13      A.    Yeah, no.

14      Q.    So once you had the patient loaded in the back,  
15      what did you do?

16      A.    That's when we strapped him in.  I started CPR,  
17      hooked him up to the EKG and the AD pads, tried to run  
18      a strip, EKG strip, to see if there was any heart  
19      rhythm, and there was nothing at the time.

20               And as I was doing that, Tim Kelly was getting  
21      the IV established and Robert Jackson was in the  
22      officer's seat protecting his airway, and he was  
23      performing a maneuver with the -- it's equipment we  
24      have.  It's called an ET tube, endotracheal tube.  It's  
25      just a plastic tube that slides into your throat and

1 helps maintain a patent airway.

2 He did that, and he actually was very  
3 successful. The IV was done. I was doing CPR, and  
4 then that is about the time when we started getting  
5 going. And Lori hopped in the back, and I believe Sean  
6 McGarty hopped up front to drive because Sean is a  
7 basic only, I remember that, and basics -- EMT-Basic is  
8 just a little bit under a cardiac, and they can't  
9 perform as many skills as a cardiac could, like IVs or  
10 whatever it may be, and administer certain drugs.

11 So not to sound mean, but the most useless  
12 person is going to go and drive the rescue because  
13 anybody can drive, I guess. So him being back there  
14 wouldn't be as useful.

15 Q. So at that point you had closed the doors to the  
16 rescue?

17 A. Yes.

18 Q. So you were at that time giving CPR to the  
19 patient?

20 A. Yes, sir.

21 Q. Was he responding?

22 A. No, sir.

23 Q. And McGarty was sitting in the officer's chair?

24 A. No, that was --

25 Q. Or Jackson, rather?

1       A.    Yes, sir.

2       Q.    Jackson was sitting in the officer's chair.  What  
3       was he doing?

4       A.    He was trying to make sure he had a patent airway,  
5       whether it be just a bag valve mask, which is this  
6       plastic tube -- plastic face piece that goes over your  
7       mouth and is connected to an air bag, and it allows him  
8       to pretty much breathe for the patient.  After he tried  
9       to do that, he grabbed -- that's when he performed the  
10      ET tube.

11      Q.    And what was Kelly doing?

12      A.    Tim was getting an IV, that's what I remember  
13      vaguely, to the left of me.

14      Q.    And then when Lori Franchina came in, what did she  
15      do?

16      A.    I remember a lot of yelling, and we were  
17      already -- we started going.  What happened in between  
18      then is very fuzzy, but all I remember from then on is  
19      we were moving.

20               Everybody was kind of still doing the same thing  
21      because pretty much what we do is as much as we can do  
22      for the patient that's already dead.  We can only do so  
23      much, and everything becomes repetitive.  So every  
24      three or five minutes, we reassess and do everything  
25      repetitively.

1           When she came in, I was already doing CPR and we  
2           were already heading to the hospital, and that's when  
3           she wanted to take over and asked me to remove my  
4           gloves or whatever.

5           Q.    Okay. So when she got in the rescue, was that  
6           when you closed the back doors?

7           A.    Yes.

8           Q.    And then you took off for the hospital?

9           A.    Yes, sir.

10          Q.    What hospital were you going to?

11          A.    Rhode Island.

12          Q.    And do you remember if she said anything when she  
13          got into the rescue?

14          A.    I don't remember. I think it was just whether it  
15          was getting drugs ready, whether it was -- I know she  
16          was trying to get me to take my gloves off. That's,  
17          like, ingrained in my brain. I don't know what kind of  
18          orders she was shouting. I'm not 100 percent sure.

19          Q.    All right. And so you're on your way to the  
20          hospital. Were you still giving CPR?

21          A.    Yes, sir.

22          Q.    Now, when you're at the back of the rescue when  
23          there were what, three other people in the back?

24          A.    At least, yes.

25          Q.    So there's -- once you took off to go to the

1 hospital, you were in the back. Were you still giving  
2 CPR?

3 A. Yes, and that's when she intervened and asked me  
4 to swap out my gloves because she said it was --

5 Q. So you were giving CPR. Kelly was in the back?

6 A. To my left.

7 Q. Okay. Where was Lori Franchina in relationship to  
8 you?

9 A. She was to my right. There's a little cabinet  
10 where the drugs are kept, lockboxes where drugs are  
11 kept, and that's mostly to the right, and that's where  
12 she was; and Robert Jackson was still in the officer's  
13 seat.

14 Q. Okay. And who was driving, McGarty?

15 A. Sean.

16 Q. So you're on your way to Rhode Island Hospital.  
17 Now, is it -- do you know how fast they were driving,  
18 approximately?

19 A. I want to say at least 40, 45 miles an hour, and  
20 that might have been in the residential area, too.

21 Q. Did you have your lights and sirens on?

22 A. Yes.

23 Q. And when you're in the back of the rescue like  
24 that with three other people, is it crowded back there?

25 A. Oh, yeah.

1 Q. And when you said she was to your right, is the  
2 patient -- are you standing facing the patient and the  
3 patient is vertical? Is that how you stand in the  
4 rescue?

5 A. The patient's head is pointing towards the front  
6 of the vehicle and foot's to the rear. I am at his  
7 waist to his left, and then behind me there's a bench.  
8 And to the left of me was Tim Kelly, and to the right  
9 was Lori in the officer's seat right by the head of the  
10 patient.

11 Q. Okay. So it was you, Lori Franchina and Tim Kelly  
12 lined up?

13 A. Pretty close. It's pretty tight in there.

14 Q. Can you stand up in there?

15 A. I have to duck my head, but I could stand up.

16 Q. How tall are you?

17 A. Five ten.

18 Q. And so you're doing CPR, and you're going 40 miles  
19 an hour?

20 A. Yes.

21 Q. So that must be difficult. The truck must be --

22 A. Yeah. I had one hand on the grab bar and one  
23 hand -- there's a bar up on the top. It's just a grab  
24 bar so you can actually do CPR, whatever it may be,  
25 just to hang on for dear life while we're heading to

1 the hospital.

2 Q. You said you had gloves on. What kind of gloves  
3 did you have on?

4 A. Just the regular ones that the department  
5 provides, the nitrile, I believe it's pronounced,  
6 gloves.

7 Q. Okay. So standard?

8 A. Yeah.

9 Q. And you said that the gloves are ingrained in your  
10 mind. Why did you say that?

11 A. Only because I -- it's kind of tough to swallow  
12 when somebody says something that you haven't done.  
13 That's why it's kind of --

14 Q. Okay. We'll get to that. So you're on your way.  
15 You've got your -- is that the first thing she said to  
16 you, Change your gloves?

17 A. Yeah, and I just kept reiterating that -- my hands  
18 sweat ridiculously. I'm sure everybody's had gloves  
19 on; and when your hands sweat, it's ridiculously hard  
20 to get another set on if you take those off.

21 So I just kept saying, I can't put another set  
22 of gloves on if I take these off. And then we're on  
23 the road. If I take my gloves off now, I'm useless. I  
24 can't do anything because now I could contaminate  
25 myself or the patient or anybody else.



1           So by me doing that, I just would have been  
2       useless. I don't know. I didn't want to kind of leave  
3       them shorthanded, so I just wanted to stay in there.

4       Q.    So did you take the gloves off?

5       A.    I did.

6       Q.    She insisted on that?

7       A.    Yes.

8       Q.    So you followed -- well, you followed her order  
9       when you took up the stair chair; right?

10      A.    Yes.

11      Q.    So you followed her order when she took you to --  
12      she told you to take your gloves off; right?

13      A.    Yes.

14      Q.    And what happened when you took off your gloves?

15      A.    When I took off my glove, I had it down at the  
16      patient. And she resumed CPR after I was trying to  
17      remove my gloves, and she was to my right.

18           And as I was removing my glove, it snapped, but  
19      there was a boatload of sweat in my hands. I didn't  
20      have any blood on my hands. If there was any, it was  
21      dried blood. There wasn't any fluid matter whatsoever,  
22      I don't remember, on my gloves.

23           All I can remember is it was just a lot of  
24      sweat, and she claimed that something hit her eye. And  
25      right when she said that, I kind of was taken back. I

1 was apologetic. I'm sorry. It was, like, I didn't  
2 mean to do it. She's like, Oh. She just kept going  
3 back and forth.

4 Q. This is in the rescue?

5 A. Yes, it's in the rescues because she's to my  
6 right. And I was apologetic right off the bat. I'm  
7 sorry. I didn't mean to do anything. I just was  
8 taking my glove off. I kept trying to tell her I think  
9 it's the sweat from my gloves, and she just wouldn't  
10 hear it. I was, like, I think it's the sweat. So I  
11 was just, I don't know, kind of beside myself.

12 Now I'm sitting in the back of the truck  
13 useless, no gloves, and I think I contaminated a  
14 member. I don't know. But I don't think it was  
15 anything.

16 Q. Do you know how far away you were from the  
17 hospital when you took your gloves off?

18 A. No, I don't. I'm sorry.

19 Q. Okay. Do you know how long after you took your  
20 gloves off you arrived at the hospital?

21 A. I'm sorry, I don't remember.

22 MR. McHUGH: Okay. That's fine. You don't have  
23 to be sorry.

24 Your Honor, I have a pair of the gloves which  
25 I'd like the witness to demonstrate; and I'd have them

1 marked as an exhibit, but I don't think we should write  
2 on them as an exhibit until he actually takes them on  
3 and off, if that's okay.

4 THE COURT: Let's give it an exhibit number for  
5 identification right now. Would it be U?

6 THE CLERK: I think U, yes.

7 THE COURT: That can be Exhibit U. We can later  
8 mark a plastic bag and put them in it. We'll mark  
9 that. I think that's probably the easiest way to  
10 proceed.

11 MR. McHUGH: Thank you, your Honor.

12 (Defendant's Exhibit U marked for ID.)

13 MR. McHUGH: With the Court's permission, can I  
14 have Firefighter Tang step down to show the jury how he  
15 puts his gloves on?

16 THE COURT: Vickie, do we need to give him a  
17 mike?

18 THE CLERK: Well, I don't know how that's going  
19 to work. You can't hold it and do it.

20 MR. McHUGH: Not really. He needs both hands.

21 THE COURT: Mr. McHugh, you're going to need to  
22 use the handheld mike.

23 MR. McHUGH: Firefighter, would you step over  
24 here in front of the jury.

25 THE COURT: Wait a minute. Now you have to

1 speak into it.

2 MR. McHUGH: You didn't tell me that part.

3 Q. First of all, are those the type of gloves you  
4 wore on July 29th, 2009, at the Job Street incident?

5 A. Yes, they are, sir.

6 Q. What I'd like you to do is show the jury -- so you  
7 put those gloves on before you leave the station?

8 A. Sometimes we put them on before, right when we  
9 pull up.

10 Q. Don't put them on yet. So you either have them on  
11 before or when you get to the scene?

12 A. Yes.

13 Q. That day, do you remember, did you put them on  
14 before you got to the scene, if you remember?

15 A. I probably had them on before because I knew when  
16 I was first on rescue I was a little more cautious.

17 THE COURT: Mr. Martin, you can move, too, if  
18 you can't see.

19 MR. MARTIN: Thank you.

20 Q. All right. Firefighter Tang, could you show the  
21 jury -- could you put the gloves on for the jury.

22 MR. McHUGH: Ms. Sabatini, do you want to be  
23 over here for this?

24 Q. Could you face the jury when you do that so they  
25 can see. So when you got out of the rescue on Job

1 Street, you had gloves on like that?

2 A. Yes, sir.

3 Q. And you had them on the whole time when you got in  
4 the rescue until Lori Franchina ordered you to take  
5 them off?

6 A. Yes.

7 Q. Correct? All right. Now, I know we're in this  
8 beautiful courtroom under optimum conditions. Can you  
9 show, when you took them off, the jury how -- were you  
10 crouched down or how do you have to stand in the  
11 rescue?

12 A. The patient was pretty much right here. Lori was  
13 here, the officer seat here, and Tim Kelly was there.  
14 So the chest was here, and when I removed --

15 Q. Well, so you were standing there, but were you  
16 standing upright or crouched over?

17 A. Oh, I was standing upright. Maybe my head was  
18 ducked down, but I wasn't on my knees or crouched.

19 Q. Okay. So you were standing, but you couldn't  
20 stand up all the way?

21 A. Correct.

22 Q. And the rescue was moving at this time?

23 A. Yes, sir.

24 Q. All right. So you said earlier that you had your  
25 hand up on, what did you call that, a bar?

1 A. Grab bar.

2 Q. Grab bar. Okay. In order to give CPR, so you had  
3 to let that go?

4 A. Yes, sir.

5 Q. When you took the gloves off, the rescue was  
6 moving; right?

7 A. Uh-huh.

8 Q. You had, what, four other people in there?

9 A. Three.

10 Q. Three other people. Oh, not counting the driver.  
11 And you said that Lieutenant Franchina was on your  
12 right?

13 A. Yes, sir.

14 Q. And was it Kelly was on your left?

15 A. Yes, sir.

16 Q. So, again, if you'd face the jury, I just want --  
17 so would that be -- you would be standing with the  
18 other officers like this?

19 A. Yes.

20 THE CLERK: Hold on.

21 MR. McHUGH: May I proceed, your Honor?

22 THE COURT: Sure.

23 Q. All right. If you stand right in front of the  
24 jury and just demonstrate to the jury how you took your  
25 gloves off.

1       A.    I just pinch right by my wrist right here. This  
2       is the most efficient way, I think. And I tuck my  
3       fingers into my glove like that and roll -- pretty much  
4       roll these fingers right into itself. Then it goes  
5       down that way.

6               Then with this here being that it was on the  
7       inside, it's clean, I use that to grab that and roll it  
8       into itself. I've always done it that way. I haven't  
9       changed it. I'm a bit of a germophobe myself.

10      Q.    Okay. What did you do with them after you take  
11      them off?

12      A.    Right in the bin.

13      Q.    Okay. Where is the bin?

14      A.    The trash bin is just -- at the time it's just  
15      around Lori and right in the little doghouse area which  
16      we look through for the driver.

17      Q.    Okay. Now, what was on the outside of your gloves  
18      when you were taking them off?

19      A.    On the outside there was, if anything, dried  
20      blood. I'm pretty sure these gloves are designed to  
21      not hold fluid or, if anything, brain matter.

22      Q.    Was there any brain matter on the outside of it?

23      A.    No. That would make no sense whatsoever. I would  
24      have to have had the brain matter on me while I was  
25      doing CPR and then also -- with the truck moving, I

1 don't see that even happening, like.

2 Q. Okay. And then -- so you throw them right in the  
3 bin?

4 A. Yes, sir.

5 Q. And then you couldn't do anything the rest of the  
6 run because --

7 A. Yeah. My hands were covered in sweat. The gloves  
8 were covered in sweat. So now I'm just standing there  
9 twiddling my thumbs.

10 Q. And did you see anything at all on the outside of  
11 the gloves when you took them off?

12 A. No. I don't remember anything at all.

13 Q. And so you took them off like that, and what did  
14 Lieutenant Franchina say when you took them off just  
15 the way you showed us?

16 A. She claimed that something went in her eye. And I  
17 just looked at my hands, and I just saw all the sweat.  
18 I was like, I think it's sweat. And then she didn't  
19 want to hear it, so -- you know.

20 Q. Did you snap those gloves right in her face?

21 A. No.

22 Q. So you had them, you said, pointing down?

23 A. Yes, sir.

24 MR. McHUGH: Thank you. You can return. I'll  
25 take those.



1 THE COURT: And the mike.

2 MR. McHUGH: Thank you, your Honor.

3 THE COURT: No problem. Mr. McHugh, did you  
4 want the lapel mike? I couldn't remember if you were  
5 using --

6 MR. McHUGH: I will take that. Thank you, your  
7 Honor.

8 THE COURT: You're welcome.

9 Q. Okay. After you took off the gloves and you said  
10 she said she got something in her eye and you said you  
11 were apologetic --

12 A. Yes.

13 Q. -- and from that point on until you got to the  
14 hospital, did she say anything to you?

15 A. No. She kept saying that, Oh, now I'm going to  
16 have to go get checked out and -- a lot of bad things.  
17 I don't remember completely, though.

18 Q. What do you mean by bad things?

19 A. Kind of belittling things, comments.

20 Q. Belittling you?

21 A. Yeah, because I was new to rescue. I don't know  
22 what it was really; but I just kind of kept quiet,  
23 tried to tell her I think it was sweat, and that was  
24 all I was trying to -- I kept saying sorry. I didn't  
25 think I did anything malicious at all.

1 Q. And did anyone else in the rescue say anything  
2 from the point at which you took your gloves off?

3 A. No.

4 Q. When Lieutenant Franchina was telling you to take  
5 the gloves off, did anyone else in the rescue say  
6 anything?

7 A. No.

8 Q. So you eventually arrive at Rhode Island Hospital?

9 A. Yes, sir.

10 Q. Now, when you arrive at Rhode Island Hospital,  
11 what do you do?

12 A. We disconnect everything that's tethered to the  
13 truck, whether it be O2 or the monitor, anything, IV  
14 bag, and load up the patient to transfer care to the  
15 ER.

16 Q. So when you load up the patient, how do you load  
17 up the patient then? What do you put them on?

18 A. We take the monitor, if need be, disconnect the O2  
19 that's connected to the truck because it has a larger  
20 portable tank to our portable tank that's on our  
21 stretcher. We have a smaller tank so we can be able to  
22 provide oxygen even in between transportation and  
23 transfer of care.

24 Q. Do you go inside -- did you go inside the hospital  
25 itself?

1 A. Yes, sir.

2 Q. Okay. Who else went inside the hospital itself?

3 A. Everybody that was in the back of the rescue,  
4 Sean. I believe that was it.

5 Q. Okay. Lieutenant Franchina, also?

6 A. Yes, she was in the -- yeah.

7 Q. Now, when you went inside the hospital, what did  
8 you do?

9 A. We just -- we normally get assigned a room. When  
10 we get a call like that, we'll call the hospital prior  
11 to our arrival stating what we have so they can reserve  
12 a room for us.

13 And we went to the designated room, transferred  
14 care to the ER personnel, and she gave pretty much the  
15 rundown on what happened.

16 Q. Who gave the rundown?

17 A. Lieutenant Franchina gives the -- whoever's in  
18 charge of the ER the rundown, pretty much what happened  
19 pre-hospital care, any interventions that we provided  
20 the patient, drugs, anything really.

21 Q. And then did you go back to the truck?

22 A. Yes. After that was all said and done, our job  
23 was done, the transfer of care was already initiated,  
24 and I had to go back to the truck and pretty much  
25 decontaminate, restock and make sure the truck is

1 pretty much just as it was prior to the run for the  
2 next patient and just as clean.

3 Q. Tell the jury what you mean by decontaminate and  
4 restock.

5 A. If there was any blood on the stretcher or on the  
6 floor, on the -- any equipment that we used would have  
7 to be replaced by the ER, whether it be bag valve mask  
8 or medications that we used.

9 Q. How long did it take you to do that?

10 A. It took a while. It was very messy. I know that.

11 Q. About 10 minutes, 15 minutes?

12 A. At least a half hour, I would think, yeah.

13 Q. And you do that right at the hospital?

14 A. Yes, sir.

15 Q. And you do that after every run where there's --  
16 well, when do you do decontamination?

17 A. Right after every run and before any other run.

18 Q. And what were the members of Engine 12 doing at  
19 this point?

20 A. They were inside still, but they eventually made  
21 their way out. We talked about it a little bit after  
22 that, and they made their way back to their truck and  
23 were on their way pretty much to grab what they used.

24 Q. Engine 12 itself was at the hospital, also?

25 A. Yes. What normally happens on a rescue run like

1       that is, it's just me and an officer; and if the scene  
2       is bad enough, we'll ask for a driver from the engine  
3       companies. And out of the four guys -- well, sometimes  
4       there's three -- one of the guys drives and any of the  
5       other three that can help help in the back of the  
6       rescue depending on what kind of situation it is,  
7       whether it be a gunshot, heart attack.

8       Q.     Now, while you were decontaminating and restocking  
9       the truck, do you know where Lieutenant Franchina was?

10      A.     She was inside the ER, and then she made her way  
11      out to speak to me.

12      Q.     Okay. Before she made her way out to speak to  
13      you, did you speak to anyone else at the hospital?

14      A.     Just an officer walked out and --

15      Q.     When you say an officer, police, fire?

16      A.     Police officer.

17      Q.     Providence police officer?

18      A.     Yes, sir. He walked out, and I was still upset  
19      about the whole situation, and he says --

20             MR. MARTIN: Objection, hearsay.

21             THE COURT: Sustained.

22             MR. McHUGH: He said he was upset, the witness.  
23      He didn't say the officer was.

24             THE COURT: The objection is sustained to the  
25      question.

1 Q. So you were still upset?

2 A. Yes.

3 Q. Correct?

4 A. Yes.

5 Q. And so an officer walked out. Did you have some  
6 conversation with him?

7 A. Yeah. He pretty much said --

8 MR. MARTIN: Objection.

9 THE COURT: Sustained. It's a weird system.

10 THE WITNESS: I'm sorry.

11 THE COURT: That's okay. I thought if I  
12 explained it to you it might make it easier for you to  
13 answer.

14 THE WITNESS: I'm a little nervous.

15 THE COURT: You're not allowed to testify about  
16 what someone else said to you. That's what we call  
17 hearsay.

18 THE WITNESS: Okay.

19 THE COURT: So you can describe anything about  
20 what you felt or what you said or whatnot, but you  
21 can't describe what somebody else said to you in most  
22 circumstances.

23 In this case, the Court has ruled that that's  
24 hearsay. So what I'm stopping you from saying is when  
25 you said "he said." What the officer said to you is

1 not admissible through you.

2 THE WITNESS: Okay.

3 THE COURT: So don't tell us what anyone said to  
4 you. Does that make sense?

5 THE WITNESS: Yeah.

6 THE COURT: I mean, maybe the rationale doesn't,  
7 but do you understand the directive?

8 THE WITNESS: Yeah. I thought that would be a  
9 part of the story, too.

10 Q. Well, so when's the next time you saw Lieutenant  
11 Franchina?

12 A. She followed the officer right after, a few  
13 seconds.

14 Q. Okay. And did you speak to Lieutenant Franchina?

15 A. Yes.

16 Q. What did she say?

17 A. She made her way out. She was -- surprisingly,  
18 she was happy. She said good job, this and that. I  
19 was apologetic still. I was like, I'm sorry if I got  
20 anything on you. She's like, Oh, it's okay. I'm going  
21 to go get seen by the doctors, and they're going to  
22 hold me for a little bit. And we were fine. That's  
23 why I never thought anything of it.

24 And she said, They're going to hold me, and  
25 they're going to run some tests and stuff; but either

1 way, she said, Good job, babe. And she proceeded to  
2 hit my rear with the clipboard as in like a football  
3 kind of. And she hits me with the clipboard in the  
4 rear. She says, Good job. I mean, if there were  
5 cameras at Rhode Island Hospital and we could go back,  
6 it would be there.

7 Q. Okay. You were surprised when she said, Good job?

8 A. Yeah, because of what she said in the rescue. I  
9 was just upset. I'm pretty tough on myself, and I was  
10 kind of upset that I -- even, I don't know, the notion  
11 of getting something like that in somebody's face or  
12 whatever, it was kind of discouraging.

13 Q. But you thought it was your sweat that actually  
14 went in her face?

15 MR. MARTIN: Objection.

16 A. That's what I thought, but then -- I'm sorry.

17 THE COURT: No, no, no. The objection's  
18 sustained. Why don't you rephrase it, Mr. McHugh.

19 Q. What did you think had gotten in her face?

20 A. I believed it was sweat.

21 Q. Where would the sweat come from?

22 A. From the inside of my glove.

23 Q. Because your hands were sweating?

24 A. Yeah. I sweat pretty profusely.

25 Q. And did you ever hear anything about the Job



1 Street incident again subsequent to that day?

2 A. Just a week later from Chief Crawford.

3 Q. Now, who is Chief Crawford?

4 A. Chief Crawford at the time was the EMS chief. He  
5 would coordinate anything EMS-related.

6 Q. Did he contact you?

7 A. Yes, and --

8 Q. How did he contact you?

9 A. I don't think he contacted me. From what I  
10 remember, he contacted my officer I was working with at  
11 the time.

12 Q. Who was that?

13 A. I honestly don't remember specifically. And we  
14 were asked to go to headquarters.

15 Q. You and the officer?

16 A. Correct. I still didn't know what was going on.  
17 I thought it might have been picking up equipment or  
18 whatever it might be.

19 Q. Headquarters at 325 Washington Street?

20 A. Yes, sir.

21 Q. Okay. And what happened when you got there?

22 A. That's when Chief Crawford asked me to go inside  
23 to the back of the rescue with him, and he asked me to  
24 put on some gloves. And I said okay. Then it started  
25 clicking like, oh, it must be from last week.

1           So I was like, okay. So I put on the gloves.  
2           And he asked me, Could you remove them for me. And I  
3           removed them like he asked. And he kind of looked at  
4           me, just, That was it? I was like, Yes, sir. He was  
5           like, Oh, okay. And then that was the last I heard of  
6           it up until I don't know when.

7           Q. Did anyone ever send you for retraining for  
8           putting your gloves on and off?

9           A. I heard about it, but nobody ever addressed me and  
10          I never went anywhere other than that one time with  
11          Chief Crawford. Guys used to make fun and say, Oh, you  
12          get your glove retraining? I was like, I don't know  
13          what's going on.

14          Q. Okay. Well, let me ask you this, Firefighter  
15          Tang. Do you know what Lori Franchina's reputation was  
16          in the Providence Fire Department as far as getting  
17          along with her fellow firefighters?

18          A. It was a little rough. Everybody on the job has a  
19          reputation, but hers was -- I don't know how to say it  
20          really. It's just guys kind of felt like what I felt,  
21          just had a hard time working with her.

22                 Nobody wanted to get into any trouble, so they  
23          kind of just -- it's tough to say. It's kind of like  
24          working with somebody that you know is kind of a  
25          troublemaker. You don't really want to be a part of

1 it, but sometimes it's forced on you because you don't  
2 want to get in any trouble. So I just keep my mouth  
3 shut and just do what I have to do. And I tried to do  
4 that, and obviously that didn't work.

5 MR. McHUGH: All right. Thank you very much,  
6 Firefighter Tang.

7 Thank you, your Honor.

8 THE COURT: Thanks, Mr. McHugh.

9 Mr. Martin.

10 **CROSS-EXAMINATION**

11 **BY MR. MARTIN:**

12 Q. You were on the second or the third floor?

13 A. I believe it was the second.

14 Q. Front of the house or the back of the house?

15 A. It was in the back of the house.

16 Q. How many rooms were between the front of the house  
17 and the back of the house?

18 A. How many rooms? At least two. His room was  
19 pretty much on the right side in the middle.

20 Q. So you went past his room and then the second room  
21 and then you found him in the back of the house?

22 A. I'm not quite sure when you say "his" and "him"  
23 who you -- I didn't walk past --

24 Q. The guy with the bullet hole in his head.

25 A. Yeah, but you said you walked by his room and then

1 him in the back.

2 Q. I thought you said his room. Why don't you  
3 explain how you got to the guy who was injured.

4 A. I walked up the stairs, and his room was --  
5 literally you walk through the kitchen, and his room  
6 was pretty much like at 2:00.

7 Q. Right. My question was, how far was his room or  
8 wherever you found him from the front of the house?

9 A. From the front of the house?

10 Q. Yeah.

11 A. Approximately maybe 20 feet, 15, 20 feet.

12 Q. Fifteen to twenty feet?

13 THE COURT: Go ahead, Mr. Tang.

14 A. In relation to, like, literally the front of the  
15 house or from the front, like, where the rescue is?  
16 I'm not quite sure.

17 Q. Where was the rescue?

18 A. The rescue was in front of the house, pretty much.

19 Q. The rescue was in front of the house? How far was  
20 the body from the front of the house?

21 A. Twenty feet.

22 Q. Twenty feet. How many people were in the room  
23 with you?

24 A. Four, six. There was two officers. Seven  
25 including Lieutenant Franchina.

1 Q. Seven people in the room?

2 A. Approximately.

3 Q. Preparing a body and a stair chair together?

4 A. Not at the time when we got there because it  
5 looked more of a crime scene. It looked like a crime  
6 scene.

7 Q. I wasn't asking about when you determined that it  
8 was a crime scene. I was asking about when you were  
9 putting the stair chair together. There were seven of  
10 you in the room, and your job was to put the stair  
11 chair together; right?

12 A. Yes. Well, those seven aren't qualified to do  
13 everything, though.

14 Q. Including not qualified to determine whether or  
15 not somebody's alive or dead?

16 A. What's that?

17 Q. Including none of them were qualified to determine  
18 whether or not someone is alive or dead?

19 A. I don't know what the qualifications of the police  
20 officers are.

21 Q. But you know that you're not qualified to make  
22 that decision?

23 A. I'm not the person in charge at the scene at the  
24 time.

25 Q. Who was the person in charge of the scene at the

1 time?

2 A. It was Lieutenant Franchina.

3 Q. So you're putting the stair chair together, and  
4 there's six or seven other people in the room with you?

5 A. Approximately.

6 Q. And were they all being quiet or was there some  
7 chatter going along?

8 A. They were talking amongst themselves, but I  
9 honestly don't remember what it was.

10 Q. Okay. And then downstairs you said that there was  
11 a woman who was hysterical?

12 A. Yes, talking to the female detective.

13 Q. When you say that she was hysterical, you mean  
14 that she was shouting and yelling?

15 A. No. She was just crying, sobbing.

16 Q. Sobbing?

17 A. Yeah.

18 Q. Saying things?

19 A. Yeah, pretty much.

20 Q. So while you're putting the stair chair together,  
21 you're focusing on your equipment and doing your job?

22 A. Yes.

23 Q. So then how when you're 20 feet from the front of  
24 the house focused on doing your job with six or seven  
25 men talking amongst themselves beside could you hear

1 Lieutenant Franchina arguing with somebody in the front  
2 yard?

3 A. Well, our job is to make sure you know your  
4 surroundings and --

5 Q. I'm sorry. Please continue.

6 THE COURT: You can continue, Mr. Tang.

7 A. Our job is to pretty much make sure the scene is  
8 safe for everybody, whether it be listening to  
9 something, hearing or seeing something that could be  
10 potentially dangerous to our safety.

11 Q. But you couldn't see Lieutenant Franchina?

12 A. No, but it was pretty apparent how loud she was  
13 yelling. She was upset with somebody.

14 Q. And it was also pretty apparent to you that the  
15 female detective was talking to the hysterical mother  
16 and Lieutenant Franchina at the same time?

17 A. Well, the stairway was only about 10 feet from  
18 where she was in the back steps. So I'm pretty sure  
19 she made her way up somehow after she saw me run by her  
20 with the stair chair considering she probably thought  
21 it was a crime scene. So she was probably scratching  
22 her head and probably wanted to see what was going on.

23 Q. Didn't you say that the argument was happening in  
24 the yard in front of the house?

25 A. No, that was after the fact we worked our way down

1 with the body.

2 Q. So tell me about this decontamination process that  
3 took 30 minutes. Who did that with you?

4 A. I did it by myself. She was being seen by ER.

5 Q. So what did you do?

6 A. Pretty much just literally clean it as it was and  
7 leave it in the condition it was prior to the run.

8 Q. And what did you clean up?

9 A. Any blood, any bodily fluids, just garbage, used  
10 equipment. And then we -- any medication we used we  
11 would replace. Any other equipment like the bag valve  
12 masks we replaced.

13 It's time consuming only because you don't want  
14 to forget something, like. I don't know. I'm pretty  
15 tough on myself. So if I forgot something and then I  
16 find out the hard way when I got to another scene, it  
17 would be pretty rough considering I was new on the  
18 rescue.

19 Q. Did you clean up blood?

20 A. Yes, there was blood.

21 Q. Where was there blood?

22 A. There was -- it was mostly on the stretcher.  
23 There was not much on the floor.

24 Q. You cleaned up other bodily fluids?

25 A. I think it was just blood.



1 Q. Okay. Have you ever been -- how many times have  
2 you taken off your gloves in a rescue over the course  
3 of your career?

4 A. Hundreds, thousands of times.

5 Q. Okay. Have you ever had somebody tell you that  
6 something snapped onto their face other than this time?

7 A. No.

8 Q. Lieutenant Franchina is the only one?

9 A. Yeah.

10 Q. And you do believe that something hit her face?

11 A. No. I was apologetic that if something did hit  
12 her face, I was apologizing, I'm sorry. I don't think  
13 anything hit her face; but I told her that if something  
14 did, I was trying to reassure her I'm pretty sure it  
15 was sweat from the inside of my glove.

16 Q. Hmm. So you went to Branch Ave. because you'd  
17 worked with those guys and you liked those guys?

18 A. Yeah.

19 Q. You got along well together?

20 A. Yes, sir.

21 Q. And you enjoyed spending time with them?

22 A. Yup.

23 Q. That includes Scott Mello?

24 A. Yes, sir.

25 Q. Sean McGarty?

1       A.     Uh-huh.

2       Q.     Yes?

3       A.     Yes, sir.

4       Q.     And Bo Jackson?

5       A.     He was not assigned to Branch Ave.

6       Q.     He wasn't? He was in the rescue that night,  
7       though; right?

8       A.     No. Well, he was in the rescue; but he wasn't,  
9       like, working on the rescue. He was on Engine 12, and  
10      he happened to be helping out with the patient. He was  
11      actually doing all the airway.

12      Q.     I see. And who was it that was driving again?

13      A.     Sean McGarty because he's a basic, so he can't  
14      really do anything like that.

15      Q.     What was it that you liked about being in Captain  
16      Mello's station?

17      A.     Almost all of my classmates were there on  
18      Engine 2. That's really what it was. It was a good  
19      station, a nice station.

20      Q.     So basically everybody was pretty good to work  
21      together with except for Lieutenant Franchina?

22      A.     I never had any issues with her. I knew it was  
23      tough to work with her, but it is what it is. You have  
24      tough co-workers. There's different personalities.  
25      Not everybody's going to get along with everybody, but

1 it is what it is.

2 Q. And how long does it take for blood to dry on  
3 those gloves that you showed us?

4 A. I don't know exact time.

5 Q. Well, that night, how long did it take before the  
6 blood that was on your gloves dried?

7 A. I don't know. I'm pretty sure it was dry when it  
8 was on there.

9 MR. MARTIN: Nothing further.

10 THE COURT: Thanks, Mr. Martin.

11 Mr. McHugh.

12 MR. McHUGH: Nothing further, your Honor. Thank  
13 you.

14 THE COURT: Mr. Tang, you can step down. Thank  
15 you, sir.

16 Mr. McHugh.

17 MR. McHUGH: Could we just check the exhibits,  
18 your Honor?

19 THE COURT: Sure.

20 MR. McHUGH: Could I see the exhibit list?

21 THE COURT: Mr. McHugh, is this going to take a  
22 few minutes? Because we could take an early afternoon  
23 break.

24 MR. McHUGH: That's fine.

25 THE COURT: Rather than just have the jury sit

1       there. I was thinking about using it as an  
2       opportunity, but I'm going to keep you guessing.  
3       Ladies and gentlemen, why don't we take the  
4       afternoon -- Mike, are the snacks here?

5               THE COURT SECURITY OFFICER: Yes, they are.

6               THE COURT: Why don't we take the afternoon  
7       break. I think it may well be that it's a short day,  
8       shorter day today. So enjoy the break now, and we'll  
9       see you back in about 15 minutes.

10              (Recess.)

11              THE COURT: Mr. McHugh.

12              MR. McHUGH: Thank you, your Honor. Your Honor,  
13       the Defendant moves Exhibit O full. There's no  
14       objection. It's the collective bargaining contract  
15       between the City of Providence and the firefighters.

16              THE COURT: Exhibit O will be admitted as a full  
17       exhibit without objection.

18              (Defendant's Exhibit O admitted in full.)

19              MR. McHUGH: And then the Defendant moves U,  
20       which are the gloves, for ID.

21              THE COURT: Exhibit -- the gloves, Exhibit U for  
22       identification, will be marked for identification but  
23       will not be admitted as a full exhibit. They were for  
24       demonstrative purposes.

25              MR. McHUGH: With that, your Honor, the

1 Defendant rests.

2 THE COURT: Thanks, Mr. McHugh.

3 Any rebuttal, Mr. Martin?

4 MR. MARTIN: No, your Honor.

5 THE COURT: Great. Ladies and gentlemen, that  
6 concludes the evidence portion of this case. You have  
7 now heard and seen all of the evidence that you will  
8 see in this case to use during your deliberations.

9 We're almost there. Not quite. Let me tell you  
10 what the schedule will look like. I'd like you to come  
11 in so that we can begin at 10:00 tomorrow morning. We  
12 need a little more time in the morning to work -- I  
13 need to work with the attorneys through the jury charge  
14 and rather than, again, have you come in and sit and  
15 wait.

16 So we're going to begin with the Defendant's  
17 closing arguments. You'll hear in the jury charge that  
18 the Plaintiff has, in many of the issues, though  
19 there's one exception to this that you'll hear about,  
20 but basically the Plaintiff has the burden of proving  
21 her case by a preponderance of the evidence. And so  
22 the person with the burden bookends. They open first,  
23 and they close last. They bookend the trial.

24 So it may seem illogical to you to have the  
25 Defendant go first, but that's the logic behind it.

1 The person with the burden has the last word in this  
2 case.

3 So we'll begin at 10:00. We're not holding them  
4 to it at all, but both counsel tell me they think their  
5 closings will be no more than an hour each. So we're  
6 looking at completing closing arguments sometime  
7 tomorrow morning.

8 The jury charge takes about 20 to 30 minutes, so  
9 it's long. It can be painful at times because I have  
10 to read it to you, but the good part is that I'll send  
11 a copy back with you to the jury room, so that will  
12 help.

13 And we're anticipating you'll get this case and  
14 begin your deliberations around lunchtime. Because of  
15 that, your federal tax dollars will be put to good use,  
16 and we will buy you lunch tomorrow.

17 So I think, Mike, what happens is they get  
18 something in the morning to order lunch.

19 Vickie, is that right?

20 THE CLERK: They've already ordered, I think.

21 THE COURT: Oh, they've already ordered? Oh,  
22 wow. So don't bring any lunch tomorrow, don't make  
23 plans to meet anyone. I've got you for the day. We've  
24 got you.

25 So that's our plan in the morning. I think

1       you'll get the case around lunchtime, give or take,  
2       maybe closer to one by the time we get through  
3       everything; but that's the plan. And then you'll begin  
4       your duties tomorrow afternoon.

5               So with that said, as I said yesterday and I  
6       will say even more so now, we're almost there, ladies  
7       and gentlemen, please continue to abide by my  
8       instructions. Don't do any independent research, don't  
9       discuss this case amongst yourselves, please don't say  
10      anything about your jury service on social media, and  
11      please don't read or listen to any news reports in the  
12      media about this trial.

13             And with that said, we'll see you back to begin  
14      at 10 a.m. tomorrow morning.

15             (Adjourned.)  
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C E R T I F I C A T I O N

I, Karen M. Wischnowsky, RPR-RMR-CRR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes in the above-entitled case.

February 10, 2017

Date

/s/ Karen M. Wischnowsky

Karen M. Wischnowsky, RPR-RMR-CRR  
Federal Official Court Reporter